

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA 18-CR-6094(G)
vs.
XAVIER TORRES, Rochester, New York
Defendant. November 4, 2021
8:30 a.m.
- - - - -X

VOLUME 12

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANK P. GERACI, JR.
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

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(WHEREUPON, the defendant is present).

THE COURT: Good morning.

MR. MARANGOLA: Good morning, Your Honor.

MR. VERRILLO: Good morning, Judge.

MS. KOCHER: Good morning.

THE COURT: A couple things before we begin. First of all, Mr. Verrillo you indicated you wanted to renew your Rule 29 motion.

MR. VERRILLO: Yes, Your Honor. The defendant has rested so I wish to renew the motion for the Judgment of Acquittal based on the reasons previously noted on the record.

THE COURT: Mr. Marangola?

MR. MARANGOLA: Government maintains its prior opposition, Judge.

THE COURT: Yes, based upon the Court's prior ruling, there being no additional evidence, the Court finds there are issues of fact for the jury on each of the elements on both charges. Therefore, the motion for Judgment of Acquittal pursuant to Rule 29 is denied.

Secondly, we talked yesterday about a limiting instruction request by Mr. Verrillo. The Court drafted the following: You have heard evidence that the defendant Xavier Torres is known by the nickname Pistolita. I instruct

1 you that this evidence is admitted only for the limited
2 purpose of identifying the person referenced as Pistolita as
3 being Xavier Torres. Therefore, you must consider it only for
4 that limited purpose, not for any other purpose.

08:48:35AM 5 Any objection to that?

6 **MR. MARANGOLA:** Judge, the only request I had not --
7 it's not so much an objection, the only request I had is that
8 the Court add P and Pepe to that because there was testimony
9 that the defendant Xavier Torres was known by P as well as by
08:48:50AM 10 Pepe.

11 **THE COURT:** Any objection to that, Mr. Verrillo?

12 **MR. VERRILLO:** Well, I just wanted to say that the
13 obvious reason Pistolita was raised was because of the
14 inference that that might mean something, so -- but I don't
08:49:12AM 15 see any prejudice in adding those two in there.

16 **THE COURT:** Okay, I will add that then. Indicate
17 known by the nicknames Pistolita, P or Pepe.

18 And then the second limiting instruction regarding
19 photographs: Members of the jury, received in evidence in
08:49:37AM 20 this case were certain photographs that were gruesome and
21 difficult to view. These photographs were received because
22 they are relevant to some of the issues involved in this case.
23 It is required that you view these photographs without passion
24 or emotion and give them whatever weight you deem appropriate.

08:49:56AM 25 **MR. MARANGOLA:** No objection to that, Your Honor.

1 **THE COURT:** Mr. Verrillo?

2 **MR. VERRILLO:** Yes, Judge.

3 **THE COURT:** Okay. We've already discussed the
4 forfeiture issue. Neither party is requesting that that be
08:50:09AM 5 submitted to the jury in the event of a conviction and that
6 that will be determined by the Court.

7 Have you had a chance to review the substantive
8 charges? Any additions?

9 **MR. MARANGOLA:** No, Your Honor, we have no requests
08:50:23AM 10 or objections regarding the substantive charge.

11 **THE COURT:** Mr. Verrillo?

12 **MR. VERRILLO:** Nothing further, Your Honor.

13 **THE COURT:** Same with the verdict sheet,
14 Mr. Marangola?

08:50:30AM 15 **MR. MARANGOLA:** No, Your Honor. I don't remember --

16 **THE COURT:** It's attached, it should be.

17 **MR. MARANGOLA:** I remember the instruction on it. I
18 don't believe -- I don't believe we had any objection to the
19 verdict sheet.

08:50:41AM 20 **THE COURT:** Okay. Mr. Verrillo?

21 **MR. VERRILLO:** No, Your Honor, I have no objection.

22 **THE COURT:** Again I'll give you a chance to look at
23 it again if you haven't really looked at it carefully --

24 **MR. MARANGOLA:** It is attached, Judge.

08:50:50AM 25 **THE COURT:** -- before we submit it to the jury.

1 **MR. MARANGOLA:** Thank you.

2 **THE COURT:** Okay, other than that we're ready to
3 begin.

4 **MR. VERRILLO:** One issue, Judge, if I could?

08:50:57AM 5 **THE COURT:** Sure.

6 **MR. VERRILLO:** I had asked Mr. Standish about his
7 testimony at the Buffalo Police Department and I read certain
8 portions and he acknowledged that he had made those statements
9 at that time. So I wanted to refer to a portion of that in my
08:51:12AM 10 closing.

11 Do I have to come back and put it on the computer
12 or can I just read it from the transcript that I have in terms
13 of how -- I mean, obviously they know what exhibit I'm talking
14 about.

08:51:24AM 15 **THE COURT:** Say that again. What do you want --

16 **MR. VERRILLO:** I have a transcript of Mr. Standish
17 when he was at the Buffalo Police Department and I read that
18 in the trial and he admitted that he had said certain things.
19 So I wanted to refer to that in my closing statement. I was
08:51:38AM 20 prepared to just bring it up and read it.

21 Do I have to publish it on the machine or --

22 **THE COURT:** Either way.

23 **MR. VERRILLO:** I would prefer just to read it. I'll
24 give them notice of what it is.

08:51:47AM 25 **THE COURT:** That's fine. If it's exactly as it was

1 quoted in the record.

2 **MR. VERRILLO:** Right, correct.

3 **THE COURT:** That's fine. Thank you. One other
4 issue that I had, was Mr. Standish offered formal immunity on
08:52:01AM 5 federal charges? He was only charged in state court?

6 **MR. MARANGOLA:** Only charged in state court, yes.

7 **THE COURT:** Not charged federally?

8 **MR. MARANGOLA:** I don't know if that was -- there
9 was no formal agreement with him with respect to that, and I
08:52:13AM 10 don't recall that being elicited as part of the testimony,
11 Judge.

12 **THE COURT:** Okay. Was there any testimony he was
13 promised in exchange for testifying truthfully he would not be
14 prosecuted federally?

08:52:23AM 15 **MR. MARANGOLA:** Not that I recall, no.

16 **THE COURT:** Okay, then I won't read that.

17 **MR. MARANGOLA:** Judge, with respect to Mr.
18 Verrillo's question on the prior testimony of Mr. Standish, he
19 asked Mr. Standish if he had given that prior testimony.

08:52:36AM 20 That testimony wasn't offered as evidence, though,
21 and he never offered that and it was never received as
22 evidence to the Court.

23 He did ask the witness if he had given that
24 testimony before, and I think Mr. Verrillo asked the witness
08:52:49AM 25 if he had accurately read that portion of the transcript. But

1 it was not received as evidence. He didn't offer it as formal
2 evidence of a prior sworn inconsistent statement so --

3 **THE COURT:** What was the witness's answer?

4 **MR. MARANGOLA:** He said Mr. Verrillo had read it
08:53:04AM 5 accurately. That was the question. If he had -- he read a
6 portion of the transcript and said did I read the prior
7 testimony you gave accurately? And the witness said yes.

8 **THE COURT:** He didn't acknowledge that he actually
9 made that statement?

08:53:18AM 10 **MR. MARANGOLA:** I think he acknowledged that he made
11 the statement, yes, yeah, he acknowledged that was his prior
12 testimony. I don't think there was any -- he didn't offer it
13 as substantive evidence.

14 **THE COURT:** I don't think he needs to, does he?

08:53:31AM 15 **MR. VERRILLO:** It was impeachment.

16 **THE COURT:** If it's in the question and it's part of
17 the question -- part of the answer, I think it's fair for him
18 to read it, okay? Okay.

19 **MR. MARANGOLA:** Judge, Ms. Kocher is going to do
08:53:42AM 20 the main closing, Your Honor, and I'll do the rebuttal for the
21 Government.

22 **THE COURT:** Okay, thank you. Anything further?

23 **MR. VERRILLO:** Nothing further, Your Honor.

24 **MR. MARANGOLA:** No, thank you.

08:53:52AM 25 **THE COURT:** Okay. We can bring in the jury.

1 (WHEREUPON, the jury is present).

2 THE COURT: Good morning, members of the jury.

3 We're ready to proceed. Ms. Kocher.

4 MS. KOCHER: Thank you, Your Honor.

09:03:16AM 5 During opening statements defense counsel said we
6 have a fundamental disagreement on who the defendant is.

7 And that may be true, but who the defendant is is
8 not what this case was about. This case is about what the
9 defendant did and who he did it with.

09:03:40AM 10 This case was about the defendant distributing
11 cocaine and heroin. It was about the defendant delivering
12 drugs to workers and picking up money from them on Burbank
13 Street.

14 It's about the defendant hiring and firing those
09:03:56AM 15 workers and running the block. It's about the defendant's
16 participation in Carlos Javier Figueroa's drug trafficking
17 organization.

18 Now, throughout this trial you learned about the
19 scope of the conspiracy, who some of the members were, and
09:04:15AM 20 about the violent shootings and murders that members of the
21 conspiracy committed in furtherance of their drug trafficking.

22 I told you during opening statements that you
23 probably wouldn't like some of the witnesses that we called,
24 and now you've had a chance to meet them, you know they
09:04:34AM 25 include drug dealers and convicted felons. But who better to

1 tell you about the innerworkings of a drug trafficking
2 organization than its very members?

3 Now, you heard from Roberto Figueroa, who was
4 Javi's brother, and one of the upper-level members of the
09:04:54AM 5 organization.

6 You also heard from Axel Aponte Camacho, somebody
7 who helped bag and work the tables and also sold drugs for the
8 conspiracy.

9 You heard from another worker or seller -- Jose
09:05:09AM 10 Figueroa, also known as Che Che. I'll refer to him as Che Che
11 throughout this closing because we have quite a few Figueras
12 so I don't want any confusion. But Che Che sold from houses
13 on Burbank Street, and was also struggling with addiction.

14 And you heard from Ronald Standish, a former
09:05:28AM 15 corrections officer who was a customer of the organization and
16 a heroin addict.

17 Now, I'm sure that Mr. Verrillo during his closing
18 argument to you will point out some of the inconsistencies
19 between those witnesses. But, remember, they all had very
09:05:46AM 20 different roles in this organization. And because they had
21 different roles, they had different perspectives on what was
22 going on.

23 So because they had different perspectives,
24 wouldn't you expect that there might be some inconsistencies
09:06:01AM 25 about what they saw and what they heard throughout the ongoing

1 conspiracy? Not to mention that some of the events these
2 people testified about happened years ago.

3 The big things that the witnesses testified about
4 were generally consistent. And when you consider what they
09:06:22AM 5 told you and the totality of the evidence, they make sense.

6 Now, during my closing here I'd like to take this
7 time to hopefully give you a better understanding of some of
8 the evidence that you heard and discuss how we have proven the
9 defendant's guilt beyond a reasonable doubt of both counts in
09:06:41AM 10 the indictment.

11 Now, starting with Count 1, the narcotics
12 conspiracy, we have shown beyond a reasonable doubt that there
13 was an agreement to sell cocaine and heroin in the Burbank
14 Street area of Rochester.

09:06:56AM 15 We have shown beyond a reasonable doubt that the
16 defendant participated in that conspiracy knowingly and
17 willfully.

18 And we have shown that that conspiracy involved at
19 least distributing 1 kilogram of heroin or more, and at least
09:07:13AM 20 5 kilograms of cocaine.

21 Now, let's start with that first element, was there
22 an agreement or an understanding to sell cocaine and heroin?
23 Absolutely. Look at Government's Exhibit 1. That's our
24 people chart. This was clearly an organization and a group of
09:07:31AM 25 people working together to distribute cocaine and heroin.

1 You have on the bottom row people that were selling
2 and worked as lookouts; the next row are people that bagged,
3 were runners, shooters for the organization; the next row
4 above that is Leitscha Poncedeleon and Roberto Figueroa, they
09:07:54AM 5 were the upper-level management that worked to get the kilos
6 from Puerto Rico to Rochester, and he also worked the table
7 and did other things for the boss, who is at the very top,
8 Carlos Javier Figueroa or Javi.

9 Now, you heard about how the organization was
09:08:14AM 10 getting kilogram quantities of cocaine from Puerto Rico, and
11 Leitscha was responsible for talking to the people from
12 Puerto Rico and organizing what addresses they would be
13 shipped to and getting them picked up. She, along with
14 Roberto, would make sure that those kilos got to the stash
09:08:33AM 15 spots.

16 Here we have just two packages that were seized on
17 January 29th, 2018 on takedown day. Each one of these
18 packages contained 4 kilograms of cocaine -- I'm sorry, 2
19 kilograms of cocaine. So four total.

09:08:50AM 20 Once those arrived they would go to the stash spot.
21 You heard about some of those locations. That included the
22 hospital or the RGH apartment that it was referred to in the
23 bottom right; 699 Main Street; the Liberty Pole apartment; and
24 the Culver Road apartment. That's where the kilos would be
09:09:08AM 25 stored, that's where they would work the table and break them

1 down to be sold on the street. That's also where they stored
2 their guns.

3 Once the larger quantities of heroin and cocaine
4 were packaged, they would be delivered to these houses. And
09:09:26AM 5 that's where runners like the defendant Pistolita; Vic, Victor
6 Nunez, who Ron knew only as the defendant's brother; and Tapon
7 would take the packages from the delivery men like Roberto or
8 Yankee and take them to these sale spots. That's including 14
9 Burbank, the house that was ultimately burned; 11 Burbank; 5
09:09:56AM 10 Thomas Street; and 16 LaForce.

11 Now, once the drugs got to these locations, even
12 the people working in the houses were working together. You
13 heard about how they had lookouts to make sure that there
14 weren't any police in the area and nobody was selling that
09:10:14AM 15 shouldn't be selling.

16 You heard about how they would use cell phones to
17 communicate. They referred to those as *maracas*, those little
18 flip phones. Here we have one of the flip phones that was
19 recovered from 11 Burbank on August 12th, 2015.

09:10:30AM 20 And you can see some familiar names here. There's
21 Rey, R-E-Y, which would be Green Eyes, Reynaldo Figueroa; and
22 then you've got Javi in this next slide here; P and Pepe.
23 Those are all names you've heard throughout this trial and
24 further proof that these individuals were working together.

09:10:54AM 25 Now, in addition to the phones, you also heard some

1 consistencies between the different locations: Hiding the
2 drugs under the siding at 16 LaForce Street; and you also
3 heard that happened at 5 Thomas Street.

4 How they would keep the drugs in a fanny pack. One
09:11:11AM 5 pocket for the drugs, one was for the money. Those were
6 consistent things at each location.

7 You heard about how they would talk in code. C
8 meant coffee or heroin because they were both tan or dark
9 colored; L meant *leche*, which in Spanish is milk, which is
09:11:30AM 10 white, just like cocaine. They would also use terms like boy
11 and girl, and that was all in an effort to evade police
12 detection.

13 You had some of the same people that were found in
14 these different houses when the police searched. Starting on
09:11:47AM 15 April 22nd of 2015, that was the first time 14 Burbank was
16 searched, the house that ultimately ended up being burned.
17 When the police entered that day, Rafi was inside. You can
18 see him in the plaid pants and the chair.

19 A few months later across the street at 11 Burbank
09:12:06AM 20 Rafi and Flaco -- or some people called him Palito, his real
21 name was John Gonzalez, were both in the house. This is all
22 evidence of a group working together in furtherance of drug
23 trafficking.

24 Now, when one of these houses would get searched,
09:12:24AM 25 they would close it up and move locations. Now, 11 Burbank

1 was searched on August 12th of 2015. We have some text
2 messages here from Exhibit 226B. You didn't see these
3 throughout the trial, but they were received, these are the
4 text messages between Ron and his wife where he was telling
09:12:47AM 5 her about going to Burbank. And this message says bringing
6 him around to the corner, said they got hit yesterday. The
7 date of this text message is August 13th, one day after 11
8 Burbank was searched.

9 Similarly another text message from Ron to his wife
09:13:05AM 10 on July 30th, the house did get hit, it's all boarded up. You
11 heard July 30th the police hit 14 Burbank and 6 Burbank on the
12 same day.

13 We'll talk a little bit about the search at 6
14 Burbank where the defendant was with drugs and money a little
09:13:25AM 15 bit later, but you heard from Investigator Briganti that when
16 they went into 14 Burbank they didn't get anything. But Che
17 Che told you it was searched, too, and when it was searched
18 they moved across the street to 11 Burbank.

19 Here's a text message from Ron to his wife just a
09:13:42AM 20 few days later August 2nd of 2015, there's a new house to go
21 to. This all shows you that this was a group working together
22 on Burbank Street to sell drugs.

23 Now, we also know it's a conspiracy because the
24 consistent product that they were selling. Roberto and Axel
09:14:03AM 25 described how Javi would mix the heroin with horse

1 tranquilizer or an anesthetic. Ron liked the product so much
2 he followed the defendant all the way to Buffalo to get it.

3 You heard about how it was packaged consistently in
4 those little black ziplock bags. And they had their stamps;
09:14:21AM 5 Roberto described that as their brand.

6 Javi would go find a stamp he liked and he would
7 buy all of them, or tell the sales clerk you can't sell those
8 to anybody else. That was the Burbank brand.

9 Javi didn't want anybody selling off brand heroin
09:14:40AM 10 and pretending like it was Burbank drugs. Those were Burbank
11 drugs with those stamps.

12 And customers would look for it too. They were
13 comfortable with it, they knew the stamp, they knew the logo,
14 they knew the brand. So stamps were very important.

09:14:57AM 15 And they would change over time. If there was an
16 overdose or a house got hit, they would mix it up so that law
17 enforcement might not know that it was their stamp at that
18 time; they try to distance themselves from it.

19 Here we have Obed was arrested at 16 LaForce Street
09:15:15AM 20 on July 13th of 2016 and caught with that blue Magoo stamp.
21 You saw that -- I'm sorry, the blue magic stamp.

22 You saw that very same stamp a few months later
23 when Axel was arrested in December of 2016 at Miller Street.
24 Those drugs he was caught with he had stolen from this Culver
09:15:35AM 25 Road stash spot. Again, the blue magic stamp was on them.

1 Ron recognized that stamp as one that he had bought on Burbank
2 Street.

3 This was a partnership in crime. Running the
4 organization with many people with compartmentalized jobs and
09:15:56AM 5 using these various locations allowed the organization to do
6 more than just one person selling drugs on Burbank Street.

7 And it also made it harder for law enforcement to
8 know what the organization was doing. Quite frankly, it
9 worked. You heard from Investigator Briganti they were
09:16:14AM 10 investigating this organization for years before the takedown
11 on January 29th of 2018.

12 Now, people did get arrested. And when they did
13 there was an agreement for that, too. Somebody got arrested
14 selling Javi's drugs, Javi would get them a lawyer. Mark
09:16:37AM 15 Young here. And he would pay their bail.

16 Now, you heard about several incidents where the
17 defendant was arrested on Burbank after his house was searched
18 where he was living at 6 Burbank in July of 2015.

19 Yankee was arrested on Burbank selling -- with
09:16:55AM 20 drugs in his car and Obed was arrested on LaForce Street with
21 those blue magic stamps. Each time Mark Young represented
22 each one of those people. Javi paid for it. He was basically
23 an in-house counsel. And Javi liked Mark Young because he
24 didn't represent rats.

09:17:15AM 25 Clearly there's an agreement between two or more

1 people to distribute heroin and cocaine in the Burbank area.

2 And when I say "distribute," I mean sell.

3 All right. Now, how was the defendant a knowing
4 and willful participant in this organization? I submit he
09:17:32AM 5 certainly was. He wasn't participating by accident or
6 mistake. He worked the table and he worked as a runner.

7 Now, Axel told you about his first time working the
8 table, Javi said welcome to the family. That was his first
9 time bagging. Javi might as well said welcome to the
09:17:54AM 10 conspiracy because that's exactly what it was.

11 Working the table was a group of people sitting
12 around for hours and hours bagging bulk quantities of cocaine
13 and heroin into those little envelopes and those little
14 plastic bags and putting them into packages that could be sold
09:18:14AM 15 on the street or from houses.

16 And the defendant did just that. He worked the
17 table at those stash spots.

18 The defendant was also a runner. He was the
19 lynchpin between working the table and getting the drugs to
09:18:31AM 20 the sellers. Without the defendant, the drugs wouldn't have
21 gotten to the Rafis, the Che Ches, the Green Eyes or the
22 Flacos of the group.

23 And there's ample evidence that he was a runner and
24 worked in that capacity. You heard from, I think, six
09:18:49AM 25 different witnesses that they saw the defendant on Burbank

1 Street. That includes Investigator Briganti; Investigator
2 Luciano; Roberto; Axel; Che Che; and Ron.

3 The defendant wasn't just hanging out on Burbank
4 Street. He wasn't just visiting friends. He was working.

09:19:12AM 5 You heard from the entire supply chain that the defendant was
6 a runner in 2015 and into 2016.

7 Roberto, who was one of the upper-level guys,
8 basically delivered from the table to the runner; told you
9 that he would bring the defendant about three or four packages
09:19:34AM 10 two or three times a day.

11 You also heard from Axel who worked the table and
12 sold, that the defendant was a runner. He knew the defendant
13 was a runner before he even started working for Javi because
14 he would hang out with his friend Obed, who was right to his
09:19:52AM 15 left in this exhibit, who was selling for Javi. And when he
16 would hang out with Obed, the defendant would bring Obed drugs
17 to sell.

18 You heard from another seller Che Che who worked at
19 14 Burbank and 11 Burbank selling. He told you when their
09:20:10AM 20 supply would get low, they would call the defendant, he would
21 bring drugs, and he'd take money from the drugs that they had
22 sold. That's a runner, ladies and gentlemen.

23 You also heard from Ron Standish, a customer who
24 even picked up on the fact the defendant was a runner. He
09:20:29AM 25 told you how there were times he would go to Burbank and ask

1 for an amount, the seller might not have it. So hang on, I
2 got to call the boss, gets on the phone, the defendant would
3 show up, and then magically the seller would have drugs to
4 sell to Ron.

09:20:48AM 5 Now, the runner's job wasn't just to deliver drugs.
6 It was also to run the block. He was in charge. You heard
7 from Che Che that he needed approval to work at 14 Burbank
8 with his stepdad Rafi, and he had to get that approval from
9 the defendant and Javi, the boss.

09:21:08AM 10 Roberto told you something similar. He said he got
11 to tell my brother who he got working. They wanted to know
12 who was working for the organization.

13 Roberto also told you if a house was short on
14 money, that the defendant was responsible for that. He had to
09:21:25AM 15 establish order. And, again, even Ron -- who was kind of an
16 outsider being a customer -- was able to tell the defendant
17 was in charge, and that's based upon his repeated trips to
18 Burbank Street, over a year's worth, he would go multiple
19 times a week.

09:21:43AM 20 I think he told you he saw the defendant over 100
21 times on Burbank Street, and during that time he had the
22 chance to see the defendant interact with some of the workers,
23 had a chance to view his demeanor, and he could tell from how
24 he spoke with those people he was the boss. I think his exact
09:22:00AM 25 words were he controlled the workers.

1 All of that testimony is evidence the defendant was
2 in charge and working to distribute cocaine and heroin with
3 other members of the conspiracy.

4 Now, in addition to the testimony that you heard,
09:22:18AM 5 we also presented seized evidence that proved the defendant
6 was involved in this conspiracy.

7 Now, you remember way back when Investigator
8 Briganti talked to you about how they did a lot of controlled
9 buys with informants to try to get search warrants from some
09:22:37AM 10 of these houses? One day in particular, on July 21st, 2015,
11 Investigator Briganti was surveilling the informant and
12 watched the defendant walk the informant from 6 Burbank, where
13 he was living -- the defendant was living, to 14 Burbank,
14 which was one of the drug spots.

09:22:59AM 15 And then the informant came back to Investigator
16 Briganti having bought these skeleton pirate stamped bags of
17 heroin. You can see the CI buy on July 21st, 2015. Those
18 were the same exact envelopes that were seized by law
19 enforcement across the street about just a few weeks later at
09:23:24AM 20 11 Burbank.

21 That shows that there's a partnership, a group of
22 people working together. And the defendant was involved. He
23 walked the confidential informant to 14 Burbank to get that
24 pirate stamp envelope of heroin.

09:23:45AM 25 All right. Now, you also heard about the

1 July 30th, 2015 search of the defendant's house at 6 Burbank.
2 When law enforcement went there, the defendant was home. They
3 found over \$3,000 in cash; they found a scale; baggies; over
4 70 rounds of ammunition; and bags of heroin stamped with the
09:24:11AM 5 devil bag.

6 We have the search warrant on July 30th of 2015.
7 You can see those little red devils. Those are the same bags
8 that a confidential informant bought on July 10th of 2015,
9 just about 20 days earlier. This shows the defendant was
09:24:32AM 10 involved in the conspiracy.

11 Now, you only heard about two drug dealers' homes
12 that were searched during this trial, that being the defendant
13 at 6 Burbank and also Ron Standish's home in June of 2016.

14 Now, Mr. Standish got up on the stand and admitted
09:24:58AM 15 to you that he sold cocaine and heroin at the end of his
16 addiction to support his habit and you got to see some of that
17 video footage from two of those buys.

18 Now, when they searched Ron Standish's house he had
19 some of the very same things the defendant had at 6 Burbank:
09:25:17AM 20 Scale, some baggies. Ron didn't have any drugs and he
21 certainly didn't have any money.

22 Defendant had over \$3,000 in his house. You've
23 heard no evidence that he had any sort of legitimate
24 employment. Ron Standish, on the other hand, worked
09:25:34AM 25 full time, sometimes overtime as a corrections officer, and

1 they didn't find any money in his house. So where do you
2 think that \$3,000 came from?

3 I think probably the most incriminating thing found
4 in Mr. Standish's house was Exhibit 224, this box with the
09:25:56AM 5 black mamba envelopes in it that he got from the defendant.

6 Now, I think Ron Standish was a pretty bad drug
7 dealer to be quite frank. Like I said to you, you got to see
8 some of the video of him selling to an informant. He was
9 really slow and had a hard time counting out those little
09:26:19AM 10 bags. That was basically a robbery waiting to happen: Sitting
11 in his car turned away, no awareness of what's going on around
12 him.

13 He had customers showing up to his house
14 unexpectedly. He had printed directions to his supplier's
09:26:39AM 15 house, Mapquest directions to a supplier's house in his car on
16 the day of his arrest.

17 I think it was pretty evident from that video that
18 he was not a seasoned drug dealer. This was something he was
19 getting into, something that was new to him, and he had the
09:26:57AM 20 defendant as a mentor.

21 The defendant gave him those black mamba envelopes
22 to help him with his drug sales and showed him how to cut a
23 straw so he could get a more consistent amount of drugs in the
24 bags.

09:27:13AM 25 Why do you think Ron was asking the defendant for

1 help in some of those text messages? I think he said I want
2 to show you what I've been doing, see if I can do better,
3 something like that. Because the defendant was a seasoned
4 drug dealer and knew what he was doing. Ron was trying to
09:27:30AM 5 figure it out and keep his addiction going.

6 Now, another incident where the defendant was found
7 to have dominion and control over some bags associated with
8 this organization was on February 6th, 2016. Axel told you
9 that morning he, the defendant and Obed were at the Liberty
09:27:55AM 10 Pole apartments, they woke up, and the defendant is saying,
11 oh, I got to go to work.

12 He wasn't going to go punch a time clock anywhere.
13 He went to Burbank because he was running the block. And he
14 took the car, that red Honda registered to Obed, to get there.
09:28:12AM 15 Obed, another conspirator in this organization.

16 And you heard from Investigator Luciano. He saw
17 the defendant get out of the driver's seat of that car. He
18 ultimately found a key to that car on the defendant's person
19 and the car was searched and they found all those Magoo bags
09:28:31AM 20 ready to go to the houses for sale.

21 Now, those Magoo bags are significant not just
22 because of the amount, that it was consistent with the intent
23 to sell, but because of the stamp. Just a few months earlier
24 Yankee was found with the exact same stamp also on Burbank
09:28:53AM 25 Street not far from where the defendant was found in that red

1 Honda. Yankee had over 200 bags of heroin with that Magoo
2 stamp. Yankee, who was described as another runner in the
3 organization.

4 So here you have it, ladies and gentlemen, Yankee
09:29:09AM 5 and the defendant, both runners for the organization, both
6 stopped with vehicles on Burbank Street in close proximity to
7 one another with the same stamp on the bags.

8 Now, when the defendant was arrested on February
9 6th he also had over \$500 in cash on him and was with one of
09:29:32AM 10 the other co-conspirators, Cano, who Ron told you he had
11 purchased from.

12 Now, we also have some cell phone evidence linking
13 the defendant to this organization. Again back to this *maraca*
14 or flip phone that was seized from 11 Burbank. You can see
09:29:53AM 15 the name P and Pepe saved in the phone.

16 And you heard from Che Che, who was in this house,
17 actually called Investigator Briganti telling him drugs were
18 going to be delivered, that he used that phone to call the
19 defendant to get reupped, and he knew he was saved as P in
09:30:10AM 20 that phone and he also knew that Rafi referred to the
21 defendant as P.

22 So given the totality of the evidence, this was not
23 a series of unrelated events. The defendant participated in
24 this conspiracy with his own conduct and action and through
09:30:29AM 25 the reasonable foreseeable actions of his co-conspirators in

1 2015 and '16.

2 Now, all that the law requires is proof of his
3 participation at any point during the conspiracy. So at any
4 point from 2015 to the takedown day January 29th, 2018. And
09:30:51AM 5 you have heard ample evidence that the defendant participated
6 during that timeframe.

7 Now, the third element of the narcotics conspiracy
8 is the drug amount. Let's talk about the scope of the
9 conspiracy and the quantity of drugs that were involved and
09:31:08AM 10 reasonably foreseeable to the defendant.

11 Now, remember I told you during opening statements
12 the defendant is charged with conspiracy, which is an
13 agreement between two or more people to commit a crime.

14 He is not charged with possession of drugs on one
09:31:25AM 15 particular day. He's charged with agreeing to distribute that
16 amount of heroin and cocaine, the 1 kilo of heroin or 5 kilos
17 or more of cocaine, and that's exactly what he did over the
18 course of time, consistently working the table where they were
19 bagging bulk amounts of cocaine and heroin and delivering
09:31:47AM 20 those thousands of bags to Burbank Street for sale.

21 The defendant even had a key to some of those stash
22 spots where they stored the kilogram quantities of drugs and
23 the drugs that were packaged for sale. He had dominion and
24 control over those apartments, just like how he had dominion
09:32:08AM 25 and control over Obed's car February 6th, 2016, and the

1 contents of it.

2 Now, you heard from cooperators that this
3 organization was moving kilo quantities of heroin and cocaine
4 each week and that's corroborated by what we found at
09:32:26AM 5 Barrington on January 29th, 2018. That's one day in this
6 conspiracy. The police seized over 4 kilograms of cocaine in
7 one day at one location. This exact same thing was happening
8 for years.

9 You heard about working the table and how they
09:32:49AM 10 would bag 31 or 62 grams of cocaine at a time, and I believe
11 the heroin amount was about 250 to 300 grams of heroin at a
12 time. And they bagged multiple times a week for years.

13 That's corroborated by what we found at Miller
14 Street. This is the stuff that Axel stole from Javi from that
09:33:14AM 15 Culver Road apartment. What was seized from Miller Street is
16 an example again of just one day of what the organization was
17 doing and how they were bagging the drugs and what was
18 reasonably foreseeable to the members of that conspiracy.

19 Because when Axel broke into that Culver Road
09:33:34AM 20 apartment, he knew what was going to be there. It wasn't a
21 guess, it wasn't luck that he just stumbled upon that amount
22 of heroin. He knew that that amount of heroin would be in
23 that stash spot because it was always there because he was a
24 member of the conspiracy and he worked the table just like the
09:33:53AM 25 defendant.

1 Now, in addition to the kilogram and cocaine
2 quantities of drugs at the stash spot, they would keep
3 materials to package them. These are some of the things we
4 found at 292 Barrington as well, the spoons and the scales;
09:34:10AM 5 and they also kept guns there.

6 Now, the defendant is responsible for the drug
7 quantities that were reasonably foreseeable to him, and what
8 was kept at those stash spots was absolutely reasonably
9 foreseeable to him.

09:34:25AM 10 But you've also heard evidence of him directly
11 possessing quantities of heroin. I have Exhibit 251 here.
12 Ron Standish told you when he went to see the defendant at
13 Prospect Avenue, there was a time where the defendant pulled
14 out a bag that had 2 kilogram quantities of heroin.

09:34:48AM 15 Now, what I have in my hand here is what was seized
16 from Miller Street, but this is a kilogram of heroin. And the
17 defendant showed Ron two of these. That is direct evidence
18 that the defendant was in a conspiracy that dealt with more
19 than a kilo of heroin.

09:35:10AM 20 So I think it's clear that the defendant was
21 involved in a conspiracy, there was a conspiracy, and that
22 we've met the threshold amount that there was a kilogram or
23 more of heroin and 5 or more kilograms of cocaine.

24 So moving on to Count 2, the firearms charge, I
09:35:28AM 25 submit to you that we have proven the defendant is guilty of

1 this count as well. We've established that he was a member of
2 the conspiracy and that the accomplices or co-conspirators
3 possessed firearms, brandished or displayed them or
4 discharged -- meaning fired firearms -- in furtherance of that
09:35:48AM 5 narcotics conspiracy.

6 Now, these are some of the firearms that were
7 seized from 292 Barrington Street. And the one in the upper
8 left is the gun that was seized from 54 Miller Street when
9 Axel was arrested. This is the arsenal that I talked about in
09:36:05AM 10 opening statement.

11 Now, Axel described this arsenal -- I think he was
12 asked why did you have it or something to that effect, but he
13 said to protect if there was any problem while someone was
14 selling or someone sold where we sold.

09:36:24AM 15 Now, these guns were moved around to the different
16 stash spots and if you had a problem, you go ask Javi for a
17 gun.

18 Now, having these guns to protect while someone was
19 selling or if someone sold while they sold, that's possession
09:36:40AM 20 of firearms in furtherance of drug trafficking. And these
21 were kept at a stash spot. Everybody knew it.

22 Now, I mentioned if you wanted a gun, you just go
23 ask Javi for it. Axel saw the defendant do just that. You
24 heard about there was one time the defendant went and asked
09:37:01AM 25 Javi for a tool because a Dominican guy had his necklace

1 stolen. Javi said get it from the car, and the defendant went
2 to the car and came back with a silver handgun.

3 You also heard from Roberto, Che Che, and Ron that
4 they've seen the defendant with a gun. Roberto told you about
09:37:20AM 5 how the defendant pistol whipped a guy who got a blow job
6 instead of money for selling drugs. I think his name was
7 Shorty. After that Shorty didn't come back to work.

8 You heard about Che Che who told you the defendant
9 rolled up on a motorcycle one time with a .45 caliber handgun;
09:37:37AM 10 and then Ron told you about that very same time the defendant
11 showed him 2 kilos of heroin, in that same bag with the heroin
12 were three guns: A shotgun, what he described as an Uzi, and
13 then this Soviet style gun was also in the bag.

14 When Ron saw that gun he said that is identical --
09:38:03AM 15 looks identical to the gun I saw. He described it as old,
16 beat up, with a wood stock, an old Soviet style gun. And
17 that's one of the guns we got out of 292 Barrington Street in
18 January of 2018.

19 You remember how Ron looked when he was telling you
09:38:22AM 20 about that experience when the defendant walked out with a bag
21 of heroin and guns? He looked terrified.

22 When I asked him how he felt when the defendant
23 showed him those things, he said he was shocked. And I
24 believe he said I realized I was in way over my head and I
09:38:43AM 25 just wanted to go.

1 Now, you might be wondering how the gun got from
2 Buffalo to Rochester in January of 2018. Well, Roberto told
3 you there was a time he and Javi went to Buffalo to get guns
4 from Pistolita. And although Roberto didn't look inside the
09:39:04AM 5 bag, that's what Javi told him they were going to do. And
6 then they picked up a bag that looked like one that would hold
7 guns.

8 This group had an arsenal to protect their drugs
9 and their money, but also to protect their turf where they
09:39:20AM 10 were selling. That was just as important. And pretty much
11 all the witnesses were consistent: That everybody knew there
12 were no independent drug dealers on Burbank Street.

13 Roberto said that's gonna be a problem if there
14 was. And you heard about several homicides in the area. And
09:39:40AM 15 we have them marked here. You can see how close they all are
16 to Burbank Street and some of the people that were involved in
17 them.

18 Now, starting with -- well, there's three here.
19 Two of them were reasonably foreseeable to the defendant, and
09:39:55AM 20 I'll explain that in a bit. One of them he was directly
21 involved with.

22 So starting with the January 20th, 2016 murder of
23 Luis Garcia, Pepe's brother -- by the way, Pepe is Victor
24 Garcia. Ron referred to the defendant as Pepe. When I say
09:40:12AM 25 Pepe now, that's who I'm referring to.

1 So you heard that Vic and Obed told Javi that Pepe,
2 Victor Garcia, was trying to move the block or take customers.
3 Javi gave that thumb's down.

4 Then Victor Garcia ends up dead in front of 15 Leo
09:40:35AM 5 Street. After that homicide Vic told Javi he shot Pepe's
6 brother because he had Pepe's jacket on. Case of mistaken
7 identity. He confused who he was shooting.

8 Ladies and gentlemen, that is a discharge in
9 furtherance of narcotics trafficking: Trying to kill somebody
09:40:52AM 10 that was moving the block.

11 Same thing with Walter Ross. He was trying to sell
12 on Burbank Street, and because of that Tapon shot and killed
13 him on September 9th, 2016. That is a discharge in
14 furtherance of drug trafficking. If you did something to
09:41:12AM 15 compromise the conspiracy, you get that thumb's down, which
16 means you were gonna get shot.

17 And that was reasonably foreseeable to every member
18 of this conspiracy because they all knew you were not allowed
19 to sell on Burbank without Javi's permission.

09:41:30AM 20 Now, the death of Gargola on March 31st, 2016, the
21 defendant was directly involved with. You heard that
22 Gargola's people had stolen 10 or 12 grams of heroin from one
23 of the defendant's workers. Javi gave that thumb's down. And
24 the defendant took that robbery very personally. He told Javi
09:41:51AM 25 I'm gonna get them.

1 March 31st, 2016, Gargola's shot and killed in his
2 car. And after that the defendant and Vic told Javi that Vic
3 was a lookout and the defendant shot Gargola through the car
4 window. Again, that is a discharge in furtherance of drug
09:42:10AM 5 trafficking.

6 Now, in addition to these murders on Burbank
7 Street, you heard about Buffalo, you heard about the death of
8 Flaco or Palito. Flaco was a member in this organization as
9 well. He was the tester of drugs, he sold out of houses or
09:42:31AM 10 that U-Haul that was parked on the street. He was found in 11
11 Burbank on August 12th, 2015. That's him in the lower right
12 photograph on the floor.

13 Che Che told you about two separate incidents where
14 Flaco got into a little bit of trouble with the defendant.

09:42:51AM 15 First the defendant was mad at Flaco for bringing
16 some drugs from Lang Street over to Burbank. For that the
17 defendant told Flaco he couldn't come work for a while.

18 The next incident Flaco was working on Burbank and
19 left for a little bit, the defendant found out he left without
09:43:11AM 20 his permission, and beat him with a broomstick -- so hard that
21 the broomstick broke.

22 Now, Flaco was killed on June 16th, 2016. He was
23 shot nine times in Osborn Alley in Buffalo, which is just four
24 blocks from 299 Prospect Street. It's about a quarter of a
09:43:36AM 25 mile.

1 Roberto told you about how he was working the
2 table. Javi was there and some others, and the defendant and
3 Vic came and told Javi Flaco was talking to a victim's family;
4 he was playing both sides, and that they were suspicious of
09:43:56AM 5 Flaco.

6 Flaco, just like Pepe, Gargola and Walter Ross had
7 become a problem for the organization. Although he wasn't
8 trying to steal customers, they didn't trust him anymore.

9 This organization was built upon trust. You heard
09:44:13AM 10 about how Javi had to approve Che Che working there; you heard
11 why Javi liked Mark Young as a lawyer so much -- because he
12 didn't represent rats. Trust was a critical component to this
13 organization's success.

14 Now, Flaco had become enough of a problem that the
09:44:31AM 15 defendant and Vic went to Javi, and just like Axel told you:
16 If there was a problem and you needed a gun, you went to Javi.

17 That's how you know Flaco's murder was in
18 furtherance of a drug trafficking crime. A threat to one
19 member of the conspiracy was a threat to all members. You
09:44:52AM 20 take one person down, the whole thing could come crashing down
21 like a house of cards.

22 Now, when Vic and the defendant went to Javi, he
23 gave that thumb's down. That shows that that murder was
24 reasonably foreseeable to the members of the conspiracy,
09:45:09AM 25 especially the defendant who was there for the thumb's down

1 and saw it happen because that's not the first thumb's down
2 you heard about.

3 Now, after the murder Vic came to the RGH apartment
4 I think it was and told Roberto while Leitscha and Javi were
09:45:28AM 5 there that kind of what had happened. He was mad. He said
6 that he and the defendant got Flaco to Buffalo, they lured him
7 to that alley, Vic was the one that pulled the trigger, but he
8 was mad because he thought the defendant was gonna try and
9 take credit for it.

09:45:45AM 10 Now, a little bit later the defendant shows up and
11 they continue to talk about what happened and how Flaco tried
12 to fight, how he tried to reach for the gun, how the last
13 words he said were I knew this was fucking gonna happen, and
14 how they were laughing about it.

09:46:05AM 15 Now, we have the medical examiner's report here
16 that shows nine gunshot wounds. VIII says perforating gunshot
17 wound of right finger, and you can see the photograph of his
18 damaged finger there. Isn't that consistent with somebody
19 that tried to fight or grab the gun?

09:46:25AM 20 It wasn't just Roberto that you heard from about
21 this murder. You heard from Ron Standish, and he told you he
22 was visiting the defendant to buy drugs on Prospect Avenue and
23 he pulled up this article: Man found dead in west side
24 shooting, dated June 6th, 2016, 11:30 a.m.

09:46:52AM 25 And when the defendant showed that article to Ron,

1 he said he fucked with the wrong people, that cat was begging
2 for his life. Those are the words of somebody that saw Flaco
3 try and fight. Those are the words of somebody that knew what
4 was going to happen to Flaco.

09:47:15AM 5 And the defendant showed Ron that article on the
6 very day it happened -- June 6th, 2016 -- while they were just
7 a few blocks away from where it happened.

8 Now, Ron knew these people. We had the extraction
9 from his Samsung phone, he had contacts for some of them.
09:47:36AM 10 Here we have Cono; P and Pepe was used by the defendant; and
11 Thomas, who was shared between the defendant and Victor Nunez
12 who Ron knew as the defendant's brother.

13 Ron's phone number, the 1860 phone number, was
14 saved into the *maraca* at 11 Burbank. We know that Ron was at
09:47:59AM 15 Prospect Avenue on June 6th, 2016, from his text messages as
16 well.

17 Now, here's a message from the defendant on May
18 28th says okay pa 299 Prospect Avenue. The defendant told Ron
19 where to go to meet him to buy cocaine and heroin in Buffalo.

09:48:19AM 20 And now Ron told you that he would actually go into
21 that house to the right behind the tree, which ends up being
22 297. But when Ron would show up the defendant would walk him
23 in. Ron wasn't there, you know, bee-bopping around the
24 neighborhood looking at house numbers. He followed the
09:48:39AM 25 defendant into whatever house he wanted him to go into.

1 And the defendant clearly had some ties to 297
2 Prospect. Do you remember that envelope that was photographed
3 at 6 Burbank when the defendant was arrested on July 30th,
4 2015? The return address is Xavier Torres, 297 Prospect
09:49:00AM 5 Avenue, Buffalo, New York. And that was just not even a year
6 before Flaco's homicide.

7 Now, June 6th, 2016, we have a text message from
8 Ron to the defendant, I'm here. Meaning I'm on Prospect
9 Avenue ready to buy cocaine and/or heroin.

09:49:20AM 10 I'm not sure -- I don't remember what he bought
11 that day. It would take Ron a little under an hour to get
12 back to Orleans County.

13 So you heard about -- you saw video of that buy of
14 the sale to the confidential informant that Ron did on
09:49:38AM 15 June 6th, 2016. That was at about 4:35 p.m., so about an hour
16 and a half after he sent the message to the defendant saying
17 I'm here.

18 And I don't know if you caught it when we played it
19 the first time, but Ron apologized to the informant, said I'm
09:49:55AM 20 sorry for taking so long, I tried to call your wife and tell
21 her why. So I'd like to play that little clip again for you.

22 I called her to tell her I was going to Buffalo.
23 Not only do you have the text messages that Ron is saying I'm
24 here, he also told the informant that he had just been to
09:50:19AM 25 Buffalo.

1 Now, that was also the same day that the defendant
2 gave Ron a new phone number for him. Ron saved it as Pepe.
3 The creation date is June 6th, 2016, and the phone number was
4 716-468-0306.

09:50:41AM 5 That's the exact same phone number that was in the
6 phone that the defendant had on his person two days later when
7 Detective Adams went to Prospect Avenue and saw the defendant
8 out on the street, he searched him, found a phone, that was
9 the phone number for that phone.

09:50:59AM 10 These are things that Ron could not make up or make
11 happen. The fact that he had the defendant's phone number in
12 his phone. The fact that his phone number was in one of the
13 drug houses on Burbank. The fact that there was an envelope
14 at 6 Burbank almost a year earlier with 297 Prospect Avenue
09:51:19AM 15 and the defendant's name as the return address.

16 The only way to view this evidence is that the
17 defendant sold drugs to Ron Standish. The only thing linking
18 Ron and the defendant is Burbank Street.

19 Now, as I told you in openings, there's no DNA or
09:51:40AM 20 fingerprint proof or testimony, and you didn't hear any of
21 that through this trial. But would that really prove what the
22 defendant agreed to do and who he agreed to do it with?

23 I submit to you that accomplice testimony, the very
24 people the defendant worked with, is the best way to show the
09:52:00AM 25 defendant agreed to show what the defendant agreed to do and

1 who he agreed to do it with.

2 I submit that the evidence of the defendant's
3 involvement in this conspiracy is overwhelming, just like the
4 evidence that the defendant, his co-conspirators and
09:52:18AM 5 accomplices possessed, brandished and discharged firearms in
6 furtherance of the conspiracy. The evidence is overwhelming.

7 When you use your common sense and consider all of
8 the evidence together as one big picture and apply it to the
9 law that Judge Geraci will give you later today, there's only
09:52:38AM 10 one reasonable, logical conclusion that you can reach, and
11 that is that the defendant is guilty of both counts in the
12 indictment. Thank you.

13 **THE COURT:** Thank you, Ms. Kocher.

14 **MS. KOCHER:** Thank you, Judge.

09:53:15AM 15 **THE COURT:** Mr. Verrillo, you may proceed.

16 **MR. VERRILLO:** Good morning, ladies and gentlemen.
17 Before commenting to you about the evidence, I wanted to thank
18 you, along with Mr. Torres, thank you for giving us the
19 opportunity to talk to you and to agree to be jurors in this
09:53:43AM 20 case.

21 We know you're jurors in this case because you have
22 a civic obligation to be, but we also understand you want to
23 see a just and fair verdict in this case. So we appreciate
24 your consideration.

09:53:56AM 25 You're being asked to judge Xavier Torres. That's

1 what you're being asked to do, and we would ask you to treat
2 Mr. Torres as you'd treat anybody that you would evaluate in
3 your normal life experience.

4 You evaluate people all the time, whether it's in
09:54:09AM 5 your job, in your dealings, your personal dealings, et cetera.
6 So we ask you to do that.

7 Mr. Torres is presumed to be innocent of the
8 charges and he's entitled to full and fair consideration of
9 the evidence. Reasonable doubt is at issue here. You have
09:54:29AM 10 reason to doubt. We'll be touching on some of the items which
11 we feel raise reasonable doubt.

12 You as jurors should consider all matters that come
13 to mind with reasonable doubt, and I'll be raising issues with
14 you, but my list is not exhaustive.

09:54:45AM 15 What the attorneys say is not evidence and pointing
16 fingers at Mr. Torres doesn't make it evidence. When you see
17 people pointing fingers at people, you should say to yourself
18 prove it. And that's what we're here to see, whether the
19 Government can prove their case beyond a reasonable doubt.

09:55:07AM 20 As in life, in solving life's problems, evidence
21 that we would seek would be reliable, would be credible, would
22 be corroborated to give us a comfort that we can make a
23 decision.

24 Who is Xavier Torres? He's 37 years old. He has
09:55:24AM 25 children. He's a simple person. Five foot one, a slight

1 person. You can look at that and say he's not physically
2 intimidating to anybody.

3 What evidence did you have that you would say is
4 reliable, that is uncontroversial? They claim that they did an
09:55:47AM 5 investigation from 2015 to January of 2018, and yet they could
6 not during all that time take a video of Mr. Torres happening
7 out on Burbank. Mere presence is not illegal, and you'll hear
8 some instructions on that.

9 They say they had a confidential source involved in
09:56:07AM 10 a sale on July 21st, yet we don't have an audio, we don't have
11 the confidential source here.

12 They did extensive pole camera -- watching people
13 what they're doing. Obviously they didn't know they were
14 being watched unannounced. We don't have that.

09:56:24AM 15 Extensive hours of wiretaps of various phones, not
16 mentioned Mr. Torres. They claim he had keys to various
17 places. We don't have any keys.

18 So things which we would agree are reliable, worthy
19 of belief and we don't have them. We have an absence of that
09:56:39AM 20 in this case.

21 The Government will say we don't have to do that,
22 but it would be relatively easy to do the things that I just
23 said to you. And the concept of reasonable doubt, which the
24 judge will instruct you on, includes reference to the absence
09:56:54AM 25 of proof that you would find credible or worthy of belief, and

1 what you find sufficient to justify a conviction.

2 The essence of the Government's case is based on
3 cooperators, people who are seeking a benefit from the
4 Government and seeking the Government's seal of approval as a
09:57:14AM 5 precondition to filing a motion for substantial assistance.
6 They say these people are reliable and worthy of belief, and
7 we disagree.

8 Inconsistent statements, false statements before
9 you. Let's start with Mr. Standish. Mr. Standish made an
09:57:33AM 10 oath as a corrections officer not to commit crimes and he did
11 so, he committed crimes by his own admission.

12 He claims to have received a clip off a phone or
13 computer involving the shooting, and he told the police
14 upfront when he met with Investigator Adams and the police on
09:57:50AM 15 June 8th of what he claimed. That's what he testified to.

16 The problem is on June 8th, two days after he
17 allegedly had this encounter with Mr. Torres, he goes before
18 Judge Fiorella, Buffalo City Court judge, who thoroughly
19 examines him and he talks about the two occasions. Remember,
09:58:11AM 20 he said he had two occasions at Prospect involving Mr. Torres.

21 When he talked to the judge, and Investigator Adams
22 was with him, he talked about two instances: One was on June
23 4th he had a controlled buy, and ten days prior to that he
24 went to Prospect and saw some assault rifles. Didn't say
09:58:32AM 25 anything about seeing anything on June 6th about any article

1 about a shooting.

2 Remember, at that time, which was June 8th, he told
3 you he was facing ten charges of possession and sale, each
4 facing 25 years. He doesn't have any federal charges in this
09:58:54AM 5 case. The Government met with him 40 times.

6 When he talked to Judge Fiorella he said the
7 following beginning on page 6, this is what we talked about in
8 his questioning. I'm going to begin on line 2, page 6.

9 Question: Okay. When you approached this property
09:59:18AM 10 the second occasion, what happened then?

11 Answer: It was also to purchase.

12 Question: Same guy?

13 Answer: Same guy.

14 Question: Do you know when you went there?

09:59:30AM 15 Answer: Approximately ten days ago.

16 What happened on that day?

17 He came out of the back room with a couple assault
18 rifles, an AK-47.

19 Question: What was the purpose of him showing you
09:59:44AM 20 these weapons?

21 Answer: He trusts me.

22 Question: All right. Why does he go to that door,
23 do you know?

24 Answer: I don't know. I don't know. I believe
09:59:57AM 25 that back door is where drugs are stashed.

1 Question: And you are coming forward today for what
2 purpose?

3 Answer: To help the police, to help myself.

4 That's what he told the judge two days after he
10:00:14AM 5 allegedly had an encounter with Mr. Torres. Didn't say
6 anything about 2 kilos of drugs, didn't say anything about
7 seeing an ad, newspaper article.

8 He cooperated. He's not facing 25 years in state
9 prison. He has no felonies. He has no federal drug charges.
10:00:41AM 10 That's what this case is about.

11 He also claims to have spoken to Pepe as the
12 defendant. No one else has said Mr. Torres is Pepe. Didn't
13 recall what other people said while they were together. We
14 know there's another person named Pepe in the neighborhood.

10:00:59AM 15 Investigator Adams relied upon what Mr. Standish
16 said, brought him to the judge and testified. A search
17 warrant was granted of 299 Prospect, and no drugs or weapons
18 were found there as alleged by Mr. Standish. He's not
19 credible, he's not worthy of belief.

10:01:18AM 20 Then we go to Roberto Figueroa, who has a prior
21 conviction for manslaughter. He denies committing any acts of
22 violence on Burbank. Yet Axel confirmed his possession of
23 weapons and violence. He's the muscle on the street.

24 Roberto told us about the term fiend. Fiend is a
10:01:38AM 25 drug user, not trusted for other parts of the operation. Yet

1 from the testimony, Jose Figueroa and Mr. Torres allegedly
2 were involved in working the tables, had drugs problems.
3 Doesn't make sense.

4 We also had the event that Roberto claimed that
10:02:00AM 5 Mr. Torres had possessed a weapon and hit Shorty with a gun,
6 yet when he testified before the grand jury he was
7 specifically asked about Pistolita.

8 Did you ever see him with a gun?

9 Answer: Naw, I ain't seen him with a gun.

10:02:18AM 10 He says one thing to the grand jury, he says one
11 thing to you.

12 We would submit that's a false statement.

13 Gargola shooting. Axel told you that the
14 Dominican, Domi, was the one who shot Gargola. No evidence
10:02:32AM 15 has been presented relative to the Gargola shooting,
16 scientific or medical evidence.

17 Leitscha was the other person that Roberto talked
18 about who kept track of the ins and outs of drugs and their
19 payments. The witnesses have tried to give very elaborate,
10:02:54AM 20 extensive allegations related to drug activities.

21 And just as in any business, if you're selling --
22 whatever you're selling -- pens, you want to sell pens,
23 pencils, whatever -- you got to keep track of the ins and outs
24 of the business, right?

10:03:11AM 25 Leitscha was the one keeping track of the ins and

1 outs of the drugs and the payments. That's what was alleged.
2 Yet when we go to the searches that have occurred, there were
3 purported drug ledgers at 14 Burbank and 11 Burbank during the
4 searches in April and August 2015, and no ledgers at
10:03:30AM 5 Mr. Torres' residence. These are matters that we would ask
6 you to consider.

7 Axel Camacho. All of the witnesses have
8 inconsistent statements of what Mr. Torres allegedly was
9 involved in. He told you he listened to wiretaps. There's
10:03:47AM 10 nothing involving Mr. Torres.

11 Look at pole cameras. Nothing involving
12 Mr. Torres.

13 And he told you, contrary to what Robert said, that
14 Robert had committed acts of violence, had two guns. He told
10:04:00AM 15 you that Domi shot Gargola. Pepe was Victor Garcia, not
16 Mr. Torres. The bags were blue magic and gladiator helmets,
17 none other.

18 Then Axel told you about an incident where he said
19 that Rafi -- he went to Rafi's wake. Jose Figueroa told you
10:04:22AM 20 he didn't know about Rafi dying for one month, but this person
21 Axel said he went to the wake.

22 Axel also told you that he made an extensive amount
23 of money working in this operation and insinuated that
24 Mr. Torres had similar involvement at the tables. He claims
10:04:49AM 25 he made over 90,000 at the tables, drug sales and barbering.

1 And his answer to what he did with the money was -- obviously
2 if any of us has 90 or \$100,000 that we accumulated without
3 Uncle Sam and New York State taking a share of it, that would
4 be something of some significance to us.

10:05:08AM 5 And his answer is he spent the money on shoes and
6 clothes and he went to the clubs on occasion. That doesn't
7 make sense. So that's who we have in Axel Camacho.

8 We also had the inconsistency on his exaggerated
9 sales. He said he made \$3,000 in a 24-hour period, yet when
10:05:32AM 10 he testified before the grand jury he made \$600 to \$700,
11 sharing that with Obed.

12 Jose Figueroa was a drug user who worked the tables
13 despite the policy that drug users were not trusted in
14 dealing -- with working at the tables.

10:05:51AM 15 Didn't know Obed and Victor as shown by the
16 pictures. Then he claimed that -- Jose claimed that he was
17 introduced to Javi by Rafi and Pistolita, yet we went over the
18 grand jury testimony where he said he was introduced by Loco,
19 who had a business relationship with Javi. Had nothing to do
10:06:10AM 20 with Mr. Torres.

21 Jose has a problem following the rules as we heard.
22 He had a prior felony of attempted weapon second. He violated
23 his probation. Had a false name, false address, used illegal
24 drugs, violated parole as a term of his cooperation, didn't
10:06:33AM 25 follow the instructions of law enforcement.

1 If you accept his testimony, he was in this
2 arrangement with the Government where he was cooperating at
3 the same time he had a side deal selling drugs. That's who
4 you had before you in Jose. Kept selling despite law
10:06:50AM 5 enforcement supervision without their approval.

6 You also heard from Jose claiming that Mr. Torres
7 had struck Rafi, yet the prior testimony that we reviewed was
8 that Javi worked with Robert or Yankee to strike Rafi.
9 Obviously, we would submit, a false statement. He also said
10:07:08AM 10 it was rare for Mr. Torres being in the house selling drugs.

11 So what we have here, ladies and gentlemen, when we
12 get down to it, is we have cooperating witnesses and we have
13 no objective, independent evidence corroborating what is
14 alleged.

10:07:25AM 15 Each of them have an interest in this case. We
16 would submit there's a lack of credible evidence. Number one,
17 evidence of wealth. They have tried to pump this operation up
18 as high as possible, kilos here, kilos there. Well, if that's
19 the case and Mr. Torres is playing some role in that, he
10:07:46AM 20 should be doing very well financially.

21 Mr. Torres has nothing to show for this alleged
22 conduct. When he was arrested he had no funds on him.

23 We saw that the search of Javi's residence he had
24 100,000 in cash at his residence. Search of Javi's mother's
10:08:06AM 25 residence, \$400,000 in cash.

1 If it were true that Mr. Torres was making 90,000
2 or 100,000, 120,000, whatever number you want to come up with,
3 if that was true, then there would be some evidence to
4 substantiate that. It's not there.

10:08:25AM 5 Mr. Torres had no control of any bags in his
6 possession dealing with any blue Magoo or blue magic design,
7 which is what we heard the design was. That wasn't the design
8 that he had July 30th of 2015 that was found at his home. It
9 was the red devil designation.

10:08:46AM 10 Lack of any ledger reference. Again, if you view a
11 drug operation as a business, it's a business. And you're
12 selling many thousands of dollars, you have to have someone to
13 keep track of what you produced, what you sold, and who gets
14 credit for it. That's just common sense, right? There are no
10:09:09AM 15 ledgers here. Not one that show Mr. Torres was involved in
16 this operation. Various searches, not one of this major
17 operation.

18 This Leitscha lady was the one keeping the records.
19 We don't have anything. That lack of any ledger records is a
10:09:27AM 20 lack of credible evidence, is an absence of proof in this case
21 that would naturally flow if you had such a major operation.

22 Investigator Briganti told you ledgers are common
23 in the drug business. We have no evidence of that. And it's
24 also important by concept, right? If you are a drug seller
10:09:49AM 25 that you'd want to keep a record of what you sold because if

1 you know how many you sold, you have a right to payment, that
2 \$1 a bag if that was truly the case.

3 There was an insinuation that Mr. Torres was a
4 muscle or a physical threat. I previously pointed out -- you
10:10:08AM 5 can look at him. He's no Arnold Schwarzenegger or Sylvester
6 Stallone. He's not intimidating to anybody.

7 No tapes of these controlled buys that they allege
8 occurred.

9 When this search occurred on February 6th, 2016,
10:10:26AM 10 there were no fingerprints in the car, no objective evidence
11 of involvement. The car was registered to Obed.

12 And Investigator Luciano told you there was no
13 evidence of criminal activity in his presence. There were no
14 drugs found on Mr. Torres.

10:10:42AM 15 All we have is inconsistent statements from
16 cooperators, which you wouldn't rely on in your every day life
17 experiences, and you shouldn't rely on here.

18 They claim that -- Mr. Standish said that there
19 were 2 kilos of drugs in Buffalo when the -- when he allegedly
10:11:04AM 20 had this get together on June 6th. Well, they did a search on
21 June 8th and there were no drugs there. There were no weapons
22 there. You heard Investigator Adams say.

23 Let me ask you this question: If you're a drug user
24 of heroin and if I left 2 kilos of heroin with you, what do
10:11:25AM 25 you think would happen? Do you think you'd still be here if

1 you had all those drugs? Does that make sense to you? We
2 would submit it doesn't make sense. We would ask you not to
3 accept it as credible.

4 The Government witnesses had plea contracts for the
10:11:43AM 5 most part. Testifying against the defendant was a part of
6 that, and the Government will decide the credit. Some cases
7 had no charges. Others had reduced charges.

8 Whether or not the witness has given substantial
9 assistance to the Government is determined by the people at
10:12:03AM 10 this table. They make that determination before a motion is
11 made.

12 They have a lot of power over each cooperator.
13 Each witness is under contract. Each witness has had multiple
14 meetings with the Government, and you will hear as a part of
10:12:18AM 15 the Court's instructions to you that false statements or
16 statements made by a witness of a material fact can be the
17 basis to disregard their entire testimony.

18 The Government has failed to prove that Mr. Torres
19 was a member of a conspiracy. We have no agreement to that
10:12:40AM 20 effect, nothing in writing that he intended to participate or
21 knew the objectives of the organization. No evidence was
22 presented as to what the alleged agreement was.

23 The Government has failed that Mr. Torres -- they
24 failed to prove Mr. Torres possessed a weapon and any
10:12:56AM 25 possession had any connection to a drug trafficking crime.

1 No witness was presented establishing any
2 knowledge, personal knowledge that Mr. Torres participated in
3 the shooting of Flaco. He wasn't charged with a homicide.

4 The Government has the burden of proving their case
10:13:14AM 5 by reliable and credible evidence beyond a reasonable doubt.

6 Now, we acknowledge that Mr. Torres resided on
7 Burbank Street. You have before you a lease which his
8 girlfriend had signed, that he had a residence and they were
9 paying rent. We acknowledge that.

10:13:32AM 10 We acknowledge that Mr. Torres knew some of the
11 people that are involved here, but mere presence doesn't mean
12 that you're guilty by association.

13 Mr. Torres also acknowledges that he used heroin,
14 and there were occasions when he sold heroin independent of
10:13:48AM 15 this group as established by the distinctive markings on
16 July 30th, and also established by the fact that he has no
17 assets to establish any kind of extensive drug activity as the
18 Government claims. It's consistent with a person who would
19 sell on occasion to maintain his drug habit.

10:14:09AM 20 Mr. Torres was never found with a weapon. He
21 wasn't found with kilos of drugs. There's a lot we can say
22 about this case, and you have been very attentive to the case
23 and to the circumstances and obviously you will make
24 determinations of what you would rely on or not, what's
10:14:30AM 25 credible or not.

1 There's going to come a time when this case is
2 over -- I'll be wrapping up shortly -- and we ask you to take
3 the time to invest in the deliberations, consider all the
4 evidence, and the lack of evidence that you would think would
10:14:44AM 5 be reasonably available.

6 For Mr. Torres, this is a very important day for
7 him. We ask you, the jurors, to ask the tough questions, to
8 think about the issues that I've raised and any issues I may
9 have not raised that would come to your attention. We ask you
10:15:00AM 10 to consider all the evidence or lack of evidence.

11 In this case we would submit that the Government
12 has failed to meet its burden of persuasion, of producing
13 reliable and credible evidence, we ask that you -- after you
14 carefully and thoughtfully consider this case, that you make
10:15:18AM 15 findings the Government has not proven its case and find that
16 Mr. Torres is not guilty on each charge. Thank you very much.

17 **THE COURT:** Thank you, Mr. Verrillo.

18 Mr. Marangola, you may proceed.

19 **MR. MARANGOLA:** Thank you, Your Honor.

10:16:12AM 20 He may not be intimidating just sitting there, but
21 when he's got one of these, he's pretty intimidating. When
22 he's got a handgun on his waist or pistol whipping workers,
23 he's pretty intimidating.

24 Mr. Verrillo said when people point, you should ask
10:16:39AM 25 them to prove it. Well, I'm going to point at the defendant,

1 but I'm not the only person that pointed at him. Seven people
2 got on that witness stand, seven of them, and pointed at him.
3 Seven witnesses.

4 Now, Mr. Verrillo stood up here and he said you're
10:17:02AM 5 here to judge the defendant. That's not true.

6 The judge is going to tell you you're here to judge
7 the facts and apply the facts as you find them to the law that
8 the judge gives you.

9 Now, I'm going to criticize some of Mr. Verrillo's
10:17:18AM 10 arguments, not all of them, I don't think it's necessary, but
11 please don't take the fact that I'm criticizing some of his
12 arguments as me attacking him personally. He's got a job to
13 do and I respect that, and I respect that he's making those
14 efforts in this case.

10:17:37AM 15 I'd like to talk about some of these arguments that
16 he's raised. He said that the defendant is in front of a
17 judge in Buffalo, he's not telling the judge in this thorough
18 examination about all these things.

19 Ladies and gentlemen, he gave you a snippet of that
10:18:00AM 20 testimony. That's it. And trying to ask you to judge -- make
21 a judgment based on that.

22 He's suggesting that Mr. Standish lied either to
23 the judge about what he saw or to the cops about when he saw
24 because he didn't give him the right date because instead of
10:18:21AM 25 June 4th, it was June 6th.

1 Ladies and gentlemen, we don't need Mr. Standish's
2 recollection at that time and whether he said June 4th or
3 June 6th. And I don't think he said a date, I don't think he
4 actually said a day, regardless, when he had been up for 24
10:18:41AM 5 hours and was withdrawing -- went through withdrawal from
6 heroin, gave them the wrong date.

7 We have the exact date, we know when he talked to
8 the defendant because the text messages on June 6th say I'm
9 coming up to see you, and then he says I'm here. We know that
10:19:04AM 10 from his text messages.

11 Now, I'm not sure if this is actually being argued
12 or not, but is there really a doubt that the man over there
13 who I'm pointing to, Xavier Torres, was identified as
14 Pistolita by people in this courtroom, and as Pepe by Mr.
10:19:28AM 15 Standish? Is there any doubt that the person Mr. Standish
16 dealt with and knew as Pepe is that man right here?

17 He saw him over 100 times, dealt with him
18 face-to-face buying drugs from him for over a year, and drove
19 to Buffalo to meet him.

10:19:55AM 20 You heard Mr. Verrillo starting to question Mr.
21 Standish saying so the defendant, the defendant, the defendant
22 and then he phrased a question, he said this person Pepe that
23 you bought from, and Mr. Standish said wait a minute. This
24 person? That's the guy sitting right next to you. That's who
10:20:12AM 25 this person is.

1 Mr. Verrillo wants to point out, oh, they didn't
2 get anything at 299 Prospect when the police raided it. Yeah,
3 they hit the wrong house. They hit the wrong house.

4 Standish described how he went into -- it's 297.
10:20:35AM 5 The defendant texted him 299, and he got there and when the
6 defendant brought him between 299 and 297, he went into 297.

7 What is completely ignored by the defense here is
8 that when he was arrested there, what did he have in his
9 pocket? What did he have in his pocket? He had the phone --
10:21:01AM 10 the defendant had the phone with the same number for the
11 contact Pepe in the drug addict's phone, trying to become a
12 drug seller, Ron Standish's phone.

13 Independent, corroborating evidence. It doesn't
14 get better than that. Mr. Standish couldn't make up a number
10:21:24AM 15 and just put it in the defendant's phone and have it be in his
16 pocket on the very same day the police go there. There's no
17 stronger tie, no stronger tie.

18 And as Ms. Kocher said, the only tie between Ron
19 Standish, a corrections officer who became a heroin addict
10:21:46AM 20 from Albion, and this drug dealer is Burbank Street. That's
21 all the case is about, folks, is his participation in the drug
22 selling operation on Burbank Street.

23 Now, Mr. Verrillo talked to you about pole camera
24 footage. He said there's no pole camera footage showing the
10:22:07AM 25 defendant on Burbank Street.

1 What's that going to -- you had six people testify
2 to seeing him on Burbank Street: Investigator Briganti,
3 Investigator Luciano, they saw the defendant on Burbank Street
4 multiple times. You had four other people testified to his
10:22:25AM 5 presence on Burbank Street.

6 He said there's no wiretaps of the defendant. You
7 got text messages from the defendant to his customer in Ron
8 Standish's phone. That's what you get on a wiretap. Now, I
9 would submit to you that those are invitations by the defense
10:22:45AM 10 to speculate.

11 I'm a little confused by the statement that the
12 defense acknowledges Xavier Torres sold some drugs
13 independently on Burbank. I'm not sure what he's
14 acknowledging because there was no proof whatsoever of the
10:23:08AM 15 defendant selling drugs independently on Burbank. None
16 whatsoever.

17 The defendant -- and he has no burden to prove
18 this, but if he's -- as the judge will tell you, what counsel
19 says is not evidence. So simply stating he sold drugs
10:23:27AM 20 independently on Burbank doesn't make it so. And I think
21 everyone in this room knows there are no freelance drug
22 dealers on Burbank, there's no independent contractors, no
23 stand alones, no one just walking up the street going I'm
24 gonna sell here today.

10:23:49AM 25 He talks about mere presence. Folks, this is not a

1 case of mere presence. Did we put Investigator Briganti on
2 and he testified I saw the defendant on Burbank Street a
3 number of times and we arrested him and said you know what,
4 folks? If he's on Burbank Street, he must be a drug dealer.
10:24:05AM 5 That's mere presence.

6 Do we say we saw him talking to Roberto Figueroa,
7 he must be a drug dealer and you should find that? That's
8 mere association.

9 That's not what this case was. You heard from the
10:24:22AM 10 people that he dealt drugs with and told you the nature of
11 their relationship, the nature of their partnership in crime.

12 We're not coming in here saying, oh, he was simply
13 there so he must be guilty. That's mere presence. That's not
14 anything close to what this case is.

10:24:44AM 15 Now, a word about the cooperating witnesses that
16 Mr. Verrillo attacked so vigorously. They're cooperating in
17 the hopes of a reduced sentence, and we acknowledge that.
18 Each one of them acknowledged that.

19 Ask yourself, though -- and you heard it from
10:25:05AM 20 them -- do these witnesses have a motive to lie and to
21 exaggerate and to falsely implicate Xavier Torres under the
22 cooperation agreement, or do they have a motivation to tell
23 the truth?

24 How are they going to best be served in this case?
10:25:26AM 25 They told you. Telling the truth. And if they don't, their

1 chance, their hope for a reduced sentence goes down the
2 toilet.

3 Also in evaluating their credibility Mr. Verrillo
4 talked about corroboration. I think there's tons of
10:25:49AM 5 corroboration in this case. We talked about it a little bit
6 with Mr. Standish. The defendant has got the key to the car
7 with 300 bags of this conspiracy's heroin, 300 bags of Magoo,
8 the Magoo heroin, same heroin Yankee has. That's how you know
9 they're in the same partnership.

10:26:20AM 10 We spent a lot of time talking about those stamps.
11 And in the beginning I'm sure you were sitting here going who
12 cares what the little designs are on the bags? Well, now you
13 know. The stamps show their partnership, the partnership with
14 all of these other individuals from bagging up these bags,
10:26:41AM 15 from selling these bags. It's a coincidence that Yankee's got
16 the same bags on the same street six weeks earlier as he has?
17 That's called corroboration.

18 So the -- give me one second. I think there was
19 one other thing I just wanted to mention here. Mr. Verrillo
10:27:26AM 20 talked about these witnesses' prior testimony between Roberto
21 Figueroa testifying at a trial against Javi about this
22 conspiracy for some five or six days, Axel Aponte Camacho for
23 about four days testifying about this conspiracy, prior grand
24 jury testimony, hundreds of pages of transcripts from
10:27:52AM 25 Ms. Macri.

1 And what are they impeached with? Was it 1,500 a
2 week or 2,500 a week you made when you were selling drugs?
3 That's what they're coming after them for?

4 Ladies and gentlemen, Ron Standish didn't even know
10:28:14AM 5 Roberto Figueroa. These guys didn't cross paths. But they're
6 testifying to the same activity that Xavier Torres engaged in.

7 And you heard these witnesses. We didn't know --
8 Mr. Verrillo says the Government has a lot of power over these
9 cooperating witnesses. You heard each one of them testify.

10:28:34AM 10 I didn't show Roberto Figueroa what Ronald Standish
11 told us and say, hey, he said he's a runner, so maybe you
12 should say he's a runner. Didn't happen. Yet they said the
13 same thing.

14 Axel Aponte wasn't shown Che Che's testimony, yet
10:28:54AM 15 they described the same conduct of this man.

16 These high school dropouts from Puerto Rico
17 testified to the same thing. Not a coincidence. I'd ask you
18 to consider all of that in evaluating their credibility.

19 Mr. Verrillo made mention about ledgers, right? He
10:29:18AM 20 says Leitscha's, you know, we tried to compare this to like a
21 Fortune 500 company, Leitscha took ledgers -- there were
22 records of these drug transactions.

23 There was not a single piece of testimony that I
24 recall that said Leitscha was keeping track of the money that
10:29:36AM 25 this defendant was making, that she was keeping track of the

1 packages this defendant was delivering. There was no
2 testimony about that whatsoever.

3 And, finally, with respect to the drug sales,
4 Mr. Verrillo knocked Mr. Aponte Camacho and said you were
10:29:57AM 5 making all that money. I think he exaggerated and made it
6 sound like Axel Aponte was walking around with \$90,000 in his
7 pocket, which of course he wasn't.

8 And what did he do with it? He said he spent it on
9 clothes, sneakers, and the clubs. Now, maybe that's not
10:30:18AM 10 believable, maybe Mr. Verrillo wouldn't spend his cash on
11 clothes or sneakers or going to the clubs, but that's what 20
12 something year old Axel Aponte did with all that cash. I
13 think that is believable.

14 Ladies and gentlemen, in the end I would ask that
10:30:38AM 15 you use your common sense, reject the invitations to speculate
16 about other evidence, what is or is not there, apply the law
17 the judge gives you, and hold the defendant accountable for
18 his involvement in this conspiracy, for his role in possessing
19 and exercising dominion and control and constructive
10:31:04AM 20 possession over these firearms that were possessed and
21 discharged in furtherance of the conspiracy, and find him
22 guilty as charged because, ladies and gentlemen, under the law
23 of conspiracy, the hand of one is the hand of all.

24 Thank you very much.

10:31:26AM 25 **THE COURT:** Thank you, Mr. Marangola.

1 Members of the jury, at this time we're going to
2 take a recess. When we return I will then instruct you on the
3 laws, the rules and the principles that will guide your
4 deliberations. In the meantime, please do not discuss the
10:31:38AM 5 matter or allow anybody to discuss the matter with you. The
6 jury may step down, we'll stand in recess.

7 (WHEREUPON, there was a pause in the proceeding).

8 (WHEREUPON, the defendant is present; the jury is
9 present).

11:09:39AM 10 **THE COURT:** Good morning, members of the jury.
11 Before I begin I want to take this opportunity to commend the
12 attorneys on the able way in which they represented their
13 individual clients and also to you, members of the jury, for
14 the care and the attention that you've given this case over
11:12:56AM 15 the course of several days we've been here.

16 Over the next hour or so I'm going to be reading to
17 you the law that applies to this case, the rules that will
18 apply to your deliberations, and the substantive charges in
19 this case.

11:13:13AM 20 I apologize in advance, but I'll be reading a lot,
21 so I won't be ad libbing this, but I will be reading the law
22 to you. You have to get it exactly as it provides.

23 Members of the jury, now that you've heard all the
24 evidence in the case as well as the final arguments of
11:13:30AM 25 counsel, it becomes my duty to instruct you on the rules, the

1 laws and the principles that will guide your deliberations.

2 In any jury trial there are in effect two judges.

3 I am one of the judges, the judge of the law; you are the
4 judges of the facts.

11:13:48AM 5 It is my duty to preside over this case to
6 determine what testimony and evidence is relevant under the
7 law for your consideration. It is also my duty at the end of
8 the trial to instruct you on the law.

9 You, the jury, are the judges of the facts, but in
11:14:08AM 10 determining the facts, in reaching your decision as to the
11 facts, it's your sworn duty to follow the law as I give it to
12 you.

13 You must follow my instructions as a whole. You
14 are not to single out any one instruction as stating the law,
11:14:24AM 15 but rather you must consider the instructions entirely.

16 You have no right to question the wisdom or the
17 correctness of any rule I'm about to state to you. That is,
18 you must not substitute or follow your own notion or opinion
19 as to what the law is or what you think it ought to be.

11:14:44AM 20 Justice through trial by jury must always depend
21 upon the willingness of each juror to seek the truth as to the
22 facts from the same evidence presented to all the jurors and
23 arrive at a verdict by applying the same rules of law.

24 You are to perform your duty without bias or
11:15:03AM 25 prejudice. It is expected you will carefully and impartially

1 consider all the evidence in the case, follow the law and
2 reach a just verdict regardless of the consequences.

3 The evidence in this case consists of the sworn
4 testimony of witnesses who took the witness stand regardless
11:15:24AM 5 of who may have called them; and all exhibits that were
6 received in evidence regardless of who may have produced
7 those; and any facts in this case have been admitted or
8 stipulated to by the parties.

9 Statements and arguments of counsel are not
11:15:40AM 10 evidence. Any evidence to which an objection was sustained by
11 the Court and any evidence ordered stricken by the Court must
12 be disregarded.

13 Anything you may have seen or heard outside this
14 courtroom is not evidence and must be entirely disregarded.

11:16:00AM 15 Throughout the course of the trial there have been
16 certain exhibits that were simply marked for identification
17 but not received in evidence, and those are not evidence for
18 your consideration.

19 You are to consider only the evidence in the case,
11:16:15AM 20 but in your consideration of the evidence you are not limited
21 to the bald statement of the witnesses. In other words, you
22 are not limited solely to what you saw or heard the witnesses
23 testify. You are permitted to draw from facts which you find
24 have been proven such reasonable inferences that you feel are
11:16:35AM 25 justified in light of your experience.

1 In deciding whether or not the Government has met
2 its burden of proof, you may consider both direct and
3 circumstantial evidence. Direct evidence is evidence that
4 proves a disputed fact directly. For example, when a witness
11:16:55AM 5 testifies what they saw, heard, observed, that is direct
6 evidence.

7 Circumstantial evidence is evidence which tends to
8 prove a disputed fact by proof of other facts. To give a
9 simple example, suppose when you came into the courthouse
11:17:13AM 10 today the sun was shining, it was a nice day, but you cannot
11 see outside. Later as you're sitting here somebody walks into
12 the courtroom with a dripping wet umbrella, and soon after
13 somebody walks in with a dripping wet raincoat.

14 Now in the assumed facts you cannot look outside
11:17:33AM 15 the courtroom, so you cannot see whether or not it's raining.
16 So you have no direct proof or evidence of that fact.
17 However, based upon the combination of facts about the
18 umbrella and the raincoat, it would be reasonable for you to
19 infer that it had been raining.

11:17:52AM 20 That is really all there is to circumstantial
21 evidence: Using your reason, experience, you infer from
22 established facts the existence or non-existence of another
23 fact. Please note, however, it is not a matter of speculation
24 or guess. It's a matter of logical inference.

11:18:11AM 25 The law makes no distinction between direct and

1 circumstantial evidence. Circumstantial evidence is of no
2 less value than direct evidence, and you may consider either
3 or both and give them such weight as you conclude is
4 warranted.

11:18:29AM 5 If an attorney asks a witness a question which
6 contains an assertion of fact, you may not consider the
7 assertion as evidence of that fact unless the witness agrees
8 with or adopts the assertion.

9 A lawyer's statements are not evidence whether the
11:18:45AM 10 statements are made during openings or closing arguments or
11 during the course of the case.

12 If any reference is made by the Court or counsel to
13 matters of evidence that does not coincide with your
14 recollection, it is your recollection which should control.

11:19:05AM 15 I'm not sure I did, but during the course of the
16 trial if I occasionally asked a question of a witness, it was
17 only in order to bring out facts not then fully covered. Do
18 not assume that I hold any opinion on the matters to which my
19 questions were addressed.

11:19:23AM 20 Remember, at all times you as jurors are at liberty
21 to disregard all comments of the Court concerning the facts in
22 arriving at your own findings of the facts.

23 In short, you should not view anything the Court
24 did or said as an indication the Court has any opinion on a
11:19:41AM 25 fact issue in this case. It's your province to decide the

1 issues in the case, not the Court's.

2 It is the duty of the attorneys on each side to
3 object when the other side offers testimony or other evidence
4 the attorney believes is not properly admissible.

11:20:01AM 5 Counsel also have the right and duty to ask the
6 Court to make rulings of law and request conferences at
7 sidebar. All those questions of law must be decided by the
8 Court. You should not show any prejudice toward an attorney
9 or their client because they have objected to the
11:20:21AM 10 admissibility of evidence or asked for a conference.

11 As I already indicated, my rulings on the
12 admissibility of evidence do not indicate any opinion about
13 the weight and effect of the evidence. You are the sole
14 judges of the credibility of the witnesses.

11:20:41AM 15 Under your oath as jurors you are not to be swayed
16 by sympathy. You are to be guided solely by the evidence in
17 the case, and the critical hard core question that you must
18 ask yourself as you sift through the evidence is has the
19 Government proven the guilt of the defendant beyond a
11:21:00AM 20 reasonable doubt.

21 It's for you alone to decide whether the Government
22 has proven that the defendant is guilty of the crimes charged
23 solely based on the evidence and subject to the law.

24 It must be clear to you that if you let fear,
11:21:19AM 25 prejudice, bias or sympathy interfere with your thinking,

1 there's a risk that you will not arrive at a true and just
2 verdict.

3 If you have a reasonable doubt as to the
4 defendant's guilt, you should not for any reason -- excuse me,
11:21:36AM 5 you should not hesitate for any reason to find a verdict of
6 acquittal.

7 If you should find the Government has met its
8 burden of proving the defendant's guilt beyond a reasonable
9 doubt, you should not hesitate because of sympathy or any
11:21:50AM 10 other reason to render a verdict of guilty.

11 The question of possible punishment of the
12 defendant is of no concern to the jury and should not in any
13 sense enter into or influence your deliberations. The duty of
14 imposing sentence rests exclusively with the Court.

11:22:12AM 15 Your function is to weigh the evidence in the case
16 and determine whether the defendant is guilty beyond a
17 reasonable doubt solely based upon the evidence.

18 Under your oath as jurors you cannot allow a
19 consideration of the punishment that may be imposed upon the
11:22:30AM 20 defendant if he is convicted, and it should not in any way
21 influence your deliberations.

22 Every defendant in a criminal case is presumed to
23 be innocent, so in this case the defendant is presumed to be
24 innocent. That presumption remains with the defendant
11:22:52AM 25 throughout the trial and it may only be overcome by evidence

1 which establishes his guilt beyond a reasonable doubt.

2 The defendant has pled not guilty in this case and,
3 therefore, has put into issue each of the elements of the
4 crimes charged. Accordingly, the Government must prove each
11:23:13AM 5 of the elements of the crimes charged beyond a reasonable
6 doubt.

7 The burden of proof is always on the Government to
8 prove beyond a reasonable doubt every essential element of the
9 crimes charged. The law never imposes upon a defendant in a
11:23:29AM 10 criminal case the burden or duty of calling any witnesses or
11 producing any evidence.

12 Since the law presumes the defendant to be
13 innocent, any defendant begins a trial with a clean slate,
14 that is, with no evidence against him.

11:23:46AM 15 Furthermore, the law permits nothing but legal
16 evidence presented before the jury to be considered in support
17 of the charge against the defendant.

18 So the presumption of innocence alone is sufficient
19 to acquit a defendant unless the jury is satisfied beyond a
11:24:06AM 20 reasonable doubt of the defendant's guilt after careful and
21 impartial consideration of all the evidence in the case.

22 Now, I've said that the Government has the burden
23 to prove the defendant guilty beyond a reasonable doubt. What
24 do we mean by reasonable doubt?

11:24:27AM 25 A reasonable doubt is a doubt based on reason

1 arising out of the evidence or the lack of evidence. A
2 reasonable doubt is a real doubt based upon reason and common
3 sense after careful and impartial consideration of all the
4 evidence in the case. A reasonable doubt is a doubt which
11:24:48AM 5 appeals to your reason, to your judgment, to your common sense
6 and to your experience.

7 A reasonable doubt does not arise from mere
8 conjecture, speculation or whim, nor from reluctance to
9 convict through feelings of sympathy for the defendant.

11:25:05AM 10 A reasonable doubt is a conscientious and reasoned
11 belief arising only after calm and impartial consideration of
12 all the evidence in the case.

13 While the Government's burden of proof is a strict
14 and heavy burden, it is not necessary that a defendant's guilt
11:25:24AM 15 be proven beyond all possible doubt. It is not required that
16 the Government prove a defendant's guilt to an absolute or
17 mathematical certainty. It is only required that the
18 Government's proof exclude any reasonable doubt concerning a
19 defendant's guilt.

11:25:46AM 20 As stated, the burden is always upon the Government
21 to prove guilt beyond a reasonable doubt. This burden never
22 shifts to a defendant since the law never imposes upon a
23 defendant in a criminal case the burden or duty of calling any
24 witnesses or producing any evidence.

11:26:07AM 25 You are to perform your duty of finding the facts

1 without bias or prejudice to any party. You are to perform
2 your final duty in an attitude of complete fairness and
3 impartiality.

4 The case is important to the Government for the
11:26:23AM 5 enforcement of criminal laws. It is a matter of prime concern
6 to the community. Equally it is important to the defendant
7 who is charged with a serious crime.

8 The fact that the prosecution is brought in the
9 name of the United States of America entitles the Government
11:26:42AM 10 to no greater consideration than that accorded to any other
11 party to a litigation. By the same token, it is entitled to
12 no less consideration. All parties, whether the Government or
13 individuals, stand as equals at the bars of justice.

14 Next I want to talk to you about witnesses and how
11:27:04AM 15 to evaluate their testimony. You, as jurors, are the sole
16 judges of the credibility of the witnesses and the weight
17 their testimony deserves. You should carefully scrutinize all
18 the testimony given, the circumstances under which each
19 witness has testified, and every matter in evidence which
11:27:25AM 20 tends to show whether a witness is worthy of belief.

21 Consider a witness's age, intelligence, motive,
22 state of mind, their demeanor and manner while on the stand.
23 Consider a witness's ability to observe the matters to which
24 they testified and whether they impress you as having an
11:27:48AM 25 accurate recollection of these events.

1 Consider any relationship a witness may bear to
2 either side of the case, the manner in which each witness
3 might be effected by the verdict and whether, if at all, each
4 witness is either supported or contradicted by other evidence
11:28:09AM 5 in the case.

6 In deciding whether you believe or do not believe
7 any witness, I suggest you ask yourself a few questions. Did
8 the person impress you as being one who was telling the truth?
9 Did they have any particular reason not to tell the truth?
11:28:27AM 10 Did they have a personal interest in the outcome of the case?
11 Did the witness seem to have a good memory? Did the witness
12 have the opportunity and ability to observe accurately the
13 things about which they testified? Did they appear to
14 understand the questions clearly and answer them directly?
11:28:47AM 15 Did the witness' testimony differ from the testimony of other
16 witnesses?

17 Inconsistencies and discrepancies in the testimony
18 of a witness or between different witnesses may or may not
19 cause the jury to discredit such testimony. Two or more
11:29:06AM 20 persons witnessing an incident or transaction may see or hear
21 it differently. An innocent misrecollection, like the failure
22 of recollection, is not an uncommon experience.

23 In weighing the effect of a discrepancy always
24 consider whether it pertains to a matter of importance or an
11:29:24AM 25 unimportant detail, and whether the discrepancy results from

1 innocent error or intentional falsehood.

2 After making your own judgment, you will give the
3 testimony of each witness such credibility that you feel it
4 deserves.

11:29:42AM 5 In evaluating the credibility of the witnesses you
6 should take into account any evidence that the witness who
7 testified may benefit in some way from the outcome of the
8 case. Such an interest in the outcome creates a motive to
9 lie, testify falsely, and may sway the witness to testify in a
11:30:00AM 10 way that advances their own interest.

11 Therefore, if you find that any witness whose
12 testimony you are considering may have an interest in the
13 outcome of the trial, then you should bear that fact in mind
14 when evaluating the credibility of their testimony and accept
11:30:17AM 15 it with great care.

16 That's not to suggest that every witness who has an
17 interest in the outcome of the case will testify falsely.
18 It's for you to decide to what extent, if any, the witness's
19 interest is effected or colored their testimony.

11:30:36AM 20 If you find that a witness has willfully testified
21 falsely about any material fact, you have the right to
22 conclude that the witness has lied about other matters. You
23 may either disregard all the witness's testimony or accept
24 whatever part of it you feel deserves to be believed.

11:31:06AM 25 You have heard witnesses who testified in this

1 trial that they were actually involved in some of the criminal
2 activity charged in the indictment. There's been a great deal
3 said about these so-called accomplices.

4 The Government argues, as it is permitted to do so,
11:31:24AM 5 that it must take the witnesses as it finds them. It argues
6 only people who themselves take part in criminal activity have
7 the knowledge required to show criminal behavior by others.

8 For those very reasons the law allows the use of
9 accomplice testimony. Indeed, it is the law in federal court
11:31:44AM 10 that testimony of accomplices may be enough in itself for
11 conviction if a jury finds that the testimony establishes
12 guilt beyond a reasonable doubt.

13 However, it's also the case that accomplice
14 testimony is of such nature that it must be scrutinized with
11:32:03AM 15 great care and viewed with particular caution when you decide
16 how much of the testimony to believe.

17 I've given you some general considerations on
18 credibility. However, let me say a few things that you may
19 want to consider during your deliberations on the subject of
11:32:21AM 20 accomplices.

21 You should ask yourself whether these so-called
22 accomplices would benefit more by lying or by telling the
23 truth. Was their testimony made up in any way because they
24 believed or hoped that they would somehow receive favorable
11:32:37AM 25 treatment by testifying falsely, or did they believe that

1 their interest would be best served by testifying truthfully.

2 If you believe that a witness was motivated by
3 hopes of personal gain, was the motivation one which would
4 cause them to lie or was it one that would cause them to tell
11:32:57AM 5 the truth? Did this motivation color their testimony?

6 In sum, you should look at all evidence in deciding
7 what credence and weight you'll want to give to accomplice
8 testimony.

9 In this case there's been testimony from Government
11:33:19AM 10 witnesses that entered into cooperation or plea agreements
11 with the Government. You are instructed that you are to draw
12 no conclusion or inference of any kind about the guilt of the
13 defendant on trial from the fact that a prosecution witness
14 pled guilty to similar charges.

11:33:36AM 15 That witness's decision to plead guilty was a
16 personal decision about their own guilt and it may not be used
17 by you in any way as evidence against or unfavorable to the
18 defendant on trial.

19 The Government is permitted to enter into this kind
11:33:53AM 20 of plea agreement. You, in turn, may accept the testimony of
21 such a witness and convict the defendant on the basis of this
22 testimony alone if it convinces you of the defendant's guilt
23 beyond a reasonable doubt.

24 However, you should bear in mind that a witness who
11:34:11AM 25 has entered into such an agreement has an interest in the case

1 different from an ordinary witness. A witness who realizes
2 that they may be able to receive a lighter sentence by giving
3 testimony favorable to the prosecution has a motive to testify
4 falsely. Therefore, you must examine their testimony with
11:34:31AM 5 caution and weigh it with great care.

6 I've given you some general considerations on
7 credibility. I will not repeat those at this time.

8 You should ask yourself whether the witness would
9 benefit more by lying or by telling the truth. Was their
11:34:47AM 10 testimony made up in any way because they believed or hoped
11 that they would somehow receive favorable treatment by
12 testifying falsely? Or did they believe that their interest
13 would be best served by testifying truthfully.

14 If you believe that the witness was motivated by
11:35:03AM 15 hopes of personal gain, was the motivation one which would
16 cause them to lie or was it one which would cause them to tell
17 the truth?

18 In sum, you should look at all the evidence in
19 deciding what credence and what weight, if any, you'll want to
11:35:18AM 20 give to such a witness.

21 If after scrutinizing their testimony you decide to
22 accept it, you may give it whatever weight that you feel it
23 deserves.

24 In this case I have allowed as admitted into
11:35:40AM 25 evidence against the defendant the acts and statements of

1 others because these acts and statements were committed by
2 persons who the Government charges were also co-conspirators
3 with the defendant.

4 The reason for allowing this evidence to be
11:35:56AM 5 received against the defendant has to do with the nature of
6 the crime of conspiracy. A conspiracy is often referred to as
7 a partnership in crime.

8 Thus, as in other types of partnerships, when
9 people enter into a conspiracy to accomplish an unlawful end,
11:36:14AM 10 each and every member becomes an agent of the other
11 co-conspirators in carrying out the conspiracy.

12 Accordingly, the reasonably foreseeable acts,
13 declarations, statements, and admissions of any member of the
14 conspiracy and in furtherance of the common purpose of the
11:36:36AM 15 conspiracy are deemed under the law to be the acts of all the
16 members and all the members are responsible for the acts,
17 declarations, statements and admissions.

18 If you find beyond a reasonable doubt that a
19 defendant was a member of the conspiracy as charged in the
11:36:54AM 20 indictment, then any acts done or statements made in
21 furtherance of the conspiracy by persons also found by you to
22 have been members of the conspiracy may be considered against
23 the defendant. This is so even if such acts were done and
24 statements were made in the defendant's absence and without
11:37:17AM 25 his knowledge.

1 However, before you may consider the statements or
2 acts of the co-conspirator in deciding the issue of the
3 defendant's guilt, you must first determine that the acts and
4 statements were made during the existence and in furtherance
5 of the unlawful scheme.

6 Acts were done or the statements made by someone
7 who you do not find to have been a member of the conspiracy,
8 or if they were not done or said in furtherance of the
9 conspiracy, they may not be considered by you as evidence
10 against the defendant.

11 There was testimony at trial that the attorneys for
12 the Government interviewed witnesses when preparing for and
13 during the trial. There's nothing improper in conducting such
14 interviews. You should not draw any unfavorable inference
15 from that conduct.

16 There's also been testimony in this case with
17 respect to the use of undercover agents and informants.
18 Undercover agents and informants are frequently used by the
19 Government to obtain leads and gain introduction to persons
20 suspected of violating the law.

21 There are certain types of crimes where without the
22 use of undercover agents and informants detection would be
23 extremely difficult. The Government's use of this technique
24 is entirely lawful as long as the defendant's rights were not
25 violated, and the defendant has not claimed that his rights

1 were violated in this case.

2 Your personal view on the use of informants or
3 undercover agents to detect unlawful activity, whether you
4 approve or disprove, is not to enter into your deliberations
11:39:08AM 5 in any way.

6 If you are satisfied beyond a reasonable doubt that
7 the defendant committed the offenses charged, you should find
8 him guilty and the circumstances that the Government made use
9 of an informant or an undercover agent is irrelevant to your
11:39:28AM 10 determination.

11 You've heard testimony of a witness who has been
12 promised in exchange for testifying truthfully, completely and
13 fully they will not be prosecuted for other federal crimes
14 related to this case, either narcotics conspiracy or firearms
11:39:51AM 15 violations occurring during the course of this agreement,
16 during the course of the commission of these acts up to the
17 date of the agreement.

18 The Government's permitted to make these kinds of
19 promises and is entitled to call as witnesses people to whom
11:40:08AM 20 these promises were given. You're instructed you may convict
21 the defendant on the basis of such witness's testimony alone
22 if you find that the testimony proves the defendant's guilt
23 beyond a reasonable doubt.

24 However, the testimony of a witness who has been
11:40:25AM 25 promised they will not be prosecuted should be examined by you

1 with greater care than the testimony of an ordinary witness.
2 You should scrutinize it closely to determine whether or not
3 it is colored in any way as to place guilt upon the defendant
4 in order to further the witness's own interest.

11:40:45AM 5 For such a witness confronted with the realization
6 that they can win their own freedom by helping to convict
7 another has a motive to falsify his testimony. Such testimony
8 should be received by you with suspicion and you may give it
9 such weight as you believe it deserves.

11:41:07AM 10 The testimony of a witness may be discredited or
11 impeached by evidence showing that the witness has been
12 convicted of a felony, a crime for which a person may receive
13 a prison sentence of more than one year. For a conviction of
14 a crime that is a felony is one of the circumstances which you
11:41:26AM 15 may consider in determining the credibility of that witness.

16 It is the sole and exclusive right of the jury to
17 determine the weight to be given to any prior conviction as
18 impeachment and the weight to be given to the testimony of
19 anybody who has been previously convicted of a felony.

11:41:47AM 20 In connection with your evaluation of the
21 credibility of the witnesses you should specifically consider
22 evidence of resentment or anger that a witness may have toward
23 the defendant or that a witness may have against another
24 witness.

11:42:03AM 25 Evidence that a witness is biased, prejudiced or

1 hostile toward the defendant requires you to view that
2 witness' testimony with caution and weigh it with care and
3 subject it to close and searching scrutiny.

4 In this case you heard the testimony of law
11:42:23AM 5 enforcement officers. The fact that a witness may be employed
6 by a state, local or federal entity as a law enforcement
7 officer does not mean that their testimony is necessarily
8 deserving of consideration of greater or lesser weight than
9 that of any other witness.

11:42:41AM 10 At the same time it's quite legitimate for defense
11 counsel to try to attack the credibility of a law enforcement
12 officer on the ground their testimony may be colored by their
13 personal or professional interest in the outcome of the case.

14 It's your decision after reviewing all the evidence
11:42:58AM 15 whether to accept the testimony of a law enforcement witness
16 and to give that testimony whatever weight you feel it
17 deserves.

18 In this case the defendant did not testify. The
19 law does not compel a defendant in a criminal case to take the
11:43:24AM 20 witness stand and testify and no presumption of guilt may be
21 raised, no inference of any kind may be drawn from the fact
22 the defendant has not testified.

23 As previously stated, the law never imposes upon a
24 defendant in a criminal case the burden or duty of calling any
11:43:43AM 25 witnesses or producing any evidence. This is a very important

1 principle which you must be aware of and must follow. It is a
2 basic rule of our criminal justice system.

3 As I advised you in the beginning of this case, you
4 may have noticed the defendant is in custody. That fact has
11:44:04AM 5 nothing to do with your determination on the issues in this
6 case. You're not to speculate on his custodial status or in
7 any way let it effect your determination.

8 The law does not require the Government to call as
9 witnesses all persons who may have been present at any time or
11:44:33AM 10 place involved in the case or who may appear to have some
11 knowledge of the matters in issue in this trial. Nor does the
12 law require the Government to produce all exhibits, all papers
13 and all things mentioned in the evidence.

14 However, in judging the credibility of the
11:44:50AM 15 witnesses who have testified and in considering the weight and
16 the effect of all the evidence that has been produced, the
17 jury may consider the failure to call other witnesses or
18 produce other evidence shown by the evidence in the case to be
19 in existence and available.

11:45:07AM 20 The jury again will always bear in mind that the
21 law never imposes upon a defendant in a criminal case the
22 burden or duty of calling any witnesses or producing any
23 evidence, and no adverse inference may be drawn from his
24 failure to do so.

11:45:26AM 25 During the trial you have heard testimony of

1 witnesses and argument by counsel that certain investigative
2 techniques were not used by the Government. You may consider
3 these facts in deciding whether the Government has met its
4 burden of proof. You should look at all the evidence or the
11:45:42AM 5 lack of evidence in deciding whether the defendant is guilty.

6 However, you are also instructed there's no legal
7 requirement that the Government use any specific investigative
8 techniques to prove its case. For example, there's no
9 requirement to attempt to take fingerprints or that it offer
11:46:02AM 10 fingerprints in evidence.

11 While you are to carefully consider the evidence
12 brought before you by the Government, you are not to speculate
13 as to why they used the techniques they did and why they did
14 not use other techniques. The Government is not on trial.
11:46:19AM 15 Law enforcement techniques are not your concern.

16 Your concern, as I stated, is to determine whether
17 or not on the evidence or lack of evidence the guilt of the
18 defendant has been proven beyond a reasonable doubt.

19 In this case you've heard evidence about evidence
11:46:39AM 20 obtained through the execution of court-authorized search
21 warrants. Evidence obtained from such search warrants was
22 properly admitted in this case and may be properly considered
23 by you.

24 Whether you approve or disapprove of how it was
11:46:56AM 25 obtained should not enter into your deliberations. You must,

1 therefore, regardless of your personal opinions, give this
2 evidence full consideration along with all the other evidence
3 in the case in determining whether the Government has proved
4 the defendant's guilt beyond a reasonable doubt.

11:47:20AM 5 In this case there were read throughout the course
6 of the trial a number of stipulations between the parties
7 regarding certain pieces of evidence. A stipulation simply
8 means the parties have agreed that if a particular witness
9 were called to testify and testified, they would give certain
11:47:41AM 10 stated testimony.

11 You must accept as true the fact that the witness
12 would have given that testimony. However, it's for you to
13 determine the effect and the weight to be given to that
14 testimony.

11:47:58AM 15 Members of the jury, received in evidence in this
16 case were certain photographs that were gruesome and difficult
17 to view. These photographs were received because they were
18 relevant to some of the issues involved in this case.

19 It is required that you view these photographs
11:48:15AM 20 without passion or emotion and give them whatever weight you
21 deem appropriate.

22 During the course of the trial you heard evidence
23 that the defendant Xavier Torres is known by the nicknames
24 Pistolita, P and Pepe. I instruct you that this evidence is
11:48:38AM 25 admitted only for the limited purpose of identifying the

1 person referred to as Pistolita, P and Pepe as being
2 Xavier Torres. Therefore, you must consider each nickname
3 only for that limited purpose and not for any other purpose.

11:49:05AM 4 Ladies and gentlemen, at this time we're going to
5 turn to the specific charges in this case, the two counts, and
6 the elements of those counts.

7 First of all, I want to indicate to you I'll be
8 citing from the indictment. The indictment is not evidence.
9 When I do cite it, remember, it's nothing more than -- the
11:49:26AM 10 indictment is nothing more than a formal method of accusing
11 the defendant of a crime. It is not evidence of any kind
12 against the defendant.

13 And also the charges in the indictment refer to
14 various dates in which the crimes are alleged to have taken
11:49:42AM 15 place. Nevertheless, it does not matter if the charges in the
16 indictment occurred on or about a certain date, or between on
17 or about certain dates and the evidence indicates that, in
18 fact, it was on another date or between other dates.

19 The law only requires substantial similarity
11:50:03AM 20 between the dates alleged in the indictment and the dates
21 established by the testimony and/or exhibits.

22 Count 1 of the indictment charges the defendant
23 Xavier Torres with participating in a conspiracy to violate
24 the drug laws of the United States in violation of Title 21,
11:50:27AM 25 United States Code, Section 846.

1 Count 1, narcotics conspiracy, reads as follows:
2 Beginning in or about 2015 and through on or about January 29,
3 2018, in the Western District of New York and elsewhere, the
4 defendant Xavier Torres a/k/a Pistolita did knowingly,
11:50:55AM 5 willfully and unlawfully combine, conspire and agree together
6 and with others, to commit the following offenses, that is, to
7 possess with intent to distribute and to distribute 5
8 kilograms or more of a mixture and substance containing, a
9 Schedule II controlled substance; and 1 kilogram or more of a
11:51:17AM 10 mixture and substance containing heroin, a Schedule I
11 controlled substance, in violation of Title 21, United States
12 Code, Section 841(a)(1) and 841(b)(1)(A), all in violation of
13 Title 21, United States Code, Section 846.

14 The essence of the crime of conspiracy is an
11:51:45AM 15 agreement or understanding between two or more persons to
16 violate some other law or laws, in this case the law
17 pertaining to possession of cocaine with intent to distribute,
18 and distribution of cocaine, and the law pertaining to the
19 possession of heroin with intent to distribute and
11:52:07AM 20 distribution of heroin.

21 A conspiracy is sometimes referred to as a
22 partnership in crime because it involves collective or
23 organized action. It presents a greater potential threat to
24 the public interest than the illegal activity of a single
11:52:25AM 25 individual since it often makes it possible to attain ends

1 more complex than those an individual acting alone could
2 accomplish, increases the likelihood that the criminal object
3 will be successfully realized, and makes detection more
4 difficult.

11:52:46AM 5 It is for these reasons that Congress authorized
6 conspiracy to be charged as its own crime, entirely separate
7 and distinct from the violations of law that may be the object
8 of the conspiracy.

9 The commission of the crime, as distinguished from
11:53:05AM 10 the agreement to commit the crime, is called a substantive
11 offense. If a conspiracy exists to violate a federal drug
12 law, even if it should fail in its purpose, it is still
13 punishable independently of the substantive offense, and the
14 Government need not prove an actual violation of the laws
11:53:25AM 15 pertaining to possession with intent to distribute and
16 distribution of cocaine and/or heroin for you to find that the
17 offense of conspiracy has been proven.

18 In other words, a conspiracy to violate federal
19 drug laws may be proven even though the specific substantive
11:53:46AM 20 offenses are not.

21 Of course, the fact that the conspiracy charged is
22 separate from the substantive offense does not preclude you
23 from considering proof of actual violations as evidence that a
24 conspiracy existed.

11:54:00AM 25 Indeed, the Government contends in this case that

1 it has introduced evidence of actual violations demonstrating
2 the conspiracy charged in the indictment.

3 To sustain its burden of proof with respect to the
4 charge of narcotics conspiracy, the Government must prove
11:54:20AM 5 beyond a reasonable doubt the following two elements:

6 First, the existence of the conspiracy, that is, an
7 agreement or understanding to violate those provisions of the
8 law that make it illegal to distribute cocaine and/or heroin
9 and/or to possess cocaine and/or heroin with intent to
11:54:40AM 10 distribute cocaine and/or heroin.

11 The first element then is: Did the conspiracy
12 alleged in the indictment exist? Was there such a conspiracy?

13 Second, the Government must prove beyond a
14 reasonable doubt that beginning in or about 2015 and through
11:55:02AM 15 on or about January 29, 2018, in the Western District of
16 New York, the defendant Xavier Torres knowingly became a
17 member of the conspiracy, that is, that he knowingly and
18 willfully associated himself with and participated in the
19 alleged conspiracy to distribute and/or possess with intent to
11:55:19AM 20 distribute cocaine and/or heroin.

21 I will now discuss the two elements of this charge.
22 First, the existence of the conspiracy and, second, whether
23 the defendant Xavier Torres knowingly associated himself with
24 and participated in the conspiracy.

11:55:47AM 25 Starting with the first element , what is a

1 conspiracy? A conspiracy is a combination, an agreement, or
2 an understanding of two or more persons to accomplish by
3 concerted action a criminal or unlawful purpose.

4 In this instance the unlawful purposes alleged to
11:56:05AM 5 be the object of the conspiracy were the distribution of
6 cocaine and/or heroin, and/or the possession of cocaine and/or
7 heroin with intent to distribute cocaine and/or heroin.

8 The gist or the essence of the crime of conspiracy
9 is the unlawful combination or agreement to violate the law.
11:56:28AM 10 The success of the conspiracy or the actual commission of the
11 criminal act that is the object of the conspiracy is not an
12 essential element of that crime.

13 The conspiracy alleged here is, therefore, the
14 agreement to distribute or to possess a controlled substance
11:56:49AM 15 with intent to distribute and it is an entirely distinct and
16 separate offense from the actual distribution of a controlled
17 substance and from the actual possession with intent to
18 distribute a controlled substance.

19 Now, to establish a conspiracy the Government is
11:57:09AM 20 not required to show that two or more people sat around a
21 table and entered into a solemn packet orally or in writing
22 stating that they had formed a conspiracy to violate the law
23 and spelling out all the details.

24 Common sense tells you that when people, in fact,
11:57:26AM 25 agree to enter into a criminal conspiracy, much is left to the

1 unexpressed understanding. It is rare that a conspiracy can
2 be proven by direct evidence of an explicit agreement.

3 To show that a conspiracy existed the evidence must
4 show that two or more persons in some way or manner came to a
11:57:44AM 5 mutual understanding, either spoken or unspoken, to violate
6 the law and to accomplish an unlawful plan.

7 If you find beyond a reasonable doubt that two or
8 more persons came to such an understanding, express or
9 implied, to violate the law and to accomplish an unlawful
11:58:12AM 10 plan, then the Government will have sustained its burden of
11 proof as to this element.

12 In determining whether there has been an unlawful
13 agreement as alleged, you may consider the actions and the
14 statements of all those you find to be co-conspirators as
11:58:25AM 15 proof that a common design existed to carry out the criminal
16 purpose.

17 Often the only evidence that is available with
18 respect to the existence of a conspiracy is that of
19 disconnected acts and conduct on the part of the alleged
11:58:46AM 20 individual co-conspirators.

21 When taken all together and considered as a whole,
22 however, those acts and conduct may warrant the inference that
23 a conspiracy existed as conclusively as would direct proof.

24 So you must first determine whether the proof
11:59:03AM 25 established beyond a reasonable doubt the existence of the

1 conspiracy. In considering this first element, you should
2 consider all the evidence that has been admitted with respect
3 to the conduct and statements of each alleged co-conspirator
4 and such inferences as may be reasonably drawn from them.

11:59:20AM 5 It is sufficient to establish the existence of the
6 conspiracy as I have already said, if from the proof of all
7 the relevant facts and circumstances you find beyond a
8 reasonable doubt that at least two alleged co-conspirators
9 came to a mutual understanding to accomplish the objectives of
11:59:36AM 10 the conspiracy by the means alleged.

11 The indictment here charges two objectives of the
12 conspiracy, namely, distribution of a mixture or substance
13 containing cocaine and/or heroin, and/or possession with
14 intent to distribute a mixture or substance containing cocaine
12:00:01PM 15 and/or heroin.

16 You are instructed as a matter of law that cocaine
17 and heroin are each a controlled substance.

18 The word "distribute" means to deliver a controlled
19 substance.

12:00:16PM 20 "Deliver" is defined as the actual, constructive
21 or attempted transfer of a controlled substance.

22 Simply stated, the words "distribute" and "deliver"
23 mean to pass on, or to hand over to another, or to cause to be
24 passed on or handed over to another, or to try to pass on or
12:00:35PM 25 hand over to another controlled substances.

1 Distribution does not require a sale. Activities
2 in furtherance of the ultimate sale, such as vouching for the
3 quality of the drugs, negotiating for or receiving the price,
4 and supplying or delivering the drugs may constitute
12:00:54PM 5 distribution. In short, distribution requires a concrete
6 involvement in the transfer of the drugs.

7 Actual possession is what most of us think of as
8 possession, that is, having physical custody or control of an
9 object. For example, if someone had drugs on his person, you
12:01:13PM 10 may find that he had possession of the drugs.

11 The law recognizes that possession may be sole or
12 joint. If one person alone possesses a controlled substance,
13 that is sole possession. It is possible, however, that more
14 than one person can have control over the same drugs. If this
12:01:30PM 15 is so, then these people have been called joint possession.

16 A person need not have actual physical custody of
17 an object to be in legal possession of it. If an individual
18 has the power and the intention to exercise substantial
19 control over an object that he does not have in his physical
12:01:56PM 20 custody, then he is in possession of that item.

21 Although the person does not have physical custody
22 of those items, he has the ability and the intention to
23 exercise substantial control over them and, thus, has what is
24 known as constructive possession of them.

12:02:14PM 25 Your decision about the defendant Xavier Torres'

1 intention to distribute controlled substances involves a
2 decision about the defendant Xavier Torres' state of mind.

3 It is obviously impossible to directly prove the
4 operation of the defendant Xavier Torres' mind, but a wise and
12:02:32PM 5 intelligent consideration of all the facts and circumstances
6 shown by the evidence and the exhibits in the case may enable
7 you to infer what the defendant's state of mind was. Since
8 you cannot read a defendant's mind, you must make inferences
9 from his behavior.

12:02:47PM 10 In our every day affairs we are continuously called
11 upon to decide from the actions of others what their state of
12 mind is. Therefore, you may well rely in part on
13 circumstantial evidence in determining the defendant
14 Xavier Torres' state of mind.

12:03:11PM 15 It is sufficient in determining intent to
16 distribute if you find that the defendant Xavier Torres
17 intended to cause or assist the distribution of the drugs.

18 Basically what you are determining is whether the
19 drugs possessed were for personal use or for the purpose of
12:03:30PM 20 distribution. Often it is possible to make this determination
21 from the quantity of drugs found in a person's possession.

22 The possession of a large quantity of narcotics
23 does not necessarily mean that a person intended to distribute
24 them. On the other hand, a person may have intended to
12:03:49PM 25 distribute narcotics even if he did not possess large amounts

1 of them.

2 Other physical evidence, such as paraphernalia for
3 the packaging or processing of drugs, can show such an intent.
4 There might also be evidence of a plan to distribute.

12:04:03PM 5 You should make your decision whether a person
6 intends to distribute any narcotics in his possession from all
7 of the evidence presented.

8 The conspiracy count charges that the controlled
9 substances involved were cocaine and/or heroin. In this
12:04:15PM 10 regard I instruct you that the purity of the drugs involved is
11 not an element of this crime. The mixture or substance need
12 only contain a detectable amount of the controlled substance.

13 If you find that the conspiracy, if you have found
14 one to exist, had either of the charged objectives, the
12:04:51PM 15 illegal purpose element will be satisfied.

16 However, you must be unanimous as to the objective,
17 that is, you must all be in agreement with respect to at least
18 one of the alleged objectives of the conspiracy.

19 If you conclude that the Government has proven
12:05:10PM 20 beyond a reasonable doubt that the conspiracy existed, you
21 must next determine the second question, that is, whether the
22 defendant Xavier Torres participated in the conspiracy with
23 knowledge of at least some of its unlawful purposes and with
24 the intent to advance one or more of its unlawful objectives.

12:05:27PM 25 The Government must prove beyond a reasonable doubt

1 that the defendant Xavier Torres knowingly and willfully
2 entered into the conspiracy, into the agreement, with a
3 criminal intent, that is, with a purpose to violate the law
4 and agreed to take part in the conspiracy to further promote
12:05:41PM 5 and cooperate in its unlawful objectives.

6 The defendant Xavier Torres is charged with having
7 committed an offense unlawfully, willfully or intentionally
8 and knowingly.

9 "Unlawfully" simply means contrary to law.

12:06:06PM 10 A person acts "intentionally" if he acts purposely
11 and deliberately and not because of ignorance, mistake,
12 accident or some other innocent reason.

13 A person acts "knowingly" if he acts intentionally
14 and voluntarily and not because of ignorance, mistake or
12:06:24PM 15 accident or carelessness.

16 A person acts "willfully" if he acts voluntarily
17 and intentionally and with a purpose to do something the law
18 forbids, in other words, with a bad purpose either to disobey
19 or to disregard the law.

12:06:40PM 20 Knowledge and intent are matters that exist in the
21 mind. Science has not yet devised a way to permit us to enter
22 into a person's mind and to know exactly what he thinks.

23 Therefore, knowledge and intent are rarely, if
24 ever, proven by direct evidence. Rather, they are matters of
12:06:57PM 25 inference to be determined by an examination of all of the

1 surrounding facts and circumstances.

2 The intent with which an act is done is often more
3 clearly and conclusively shown by the act itself or by a
4 series of acts than by words or explanations of the act
12:07:16PM 5 uttered long after its occurrence. Frequently the acts of an
6 individual tell us more about his intentions than do his
7 words.

8 Accordingly, intent and knowledge are usually
9 established by the surrounding facts and circumstances as of
12:07:30PM 10 the time the acts in question occurred or the events took
11 place and the reasonable inferences to be drawn from those
12 facts, circumstances and events.

13 You should apply your common sense and draw such
14 reasonable inferences as may be warranted by the facts proved
12:07:48PM 15 to your satisfaction.

16 In determining these issues you may consider any
17 statements that the defendant Xavier Torres made and acts that
18 he did or failed to do together with all of the other facts
19 and circumstances in evidence that reasonably relate to a
12:08:01PM 20 determination of his state of mind.

21 You must be satisfied beyond a reasonable doubt
22 that in joining the conspiracy, if you find that the defendant
23 Xavier Torres did join the conspiracy, he knew what he was
24 doing, that he took the actions in question deliberately and
12:08:14PM 25 voluntarily.

1 It is important for you to note that the defendant
2 Xavier Torres' participation in the conspiracy must be
3 established by independent evidence of his own acts or
4 statements, as well as those of the other alleged
12:08:28PM 5 co-conspirators and the reasonable inferences that may be
6 drawn from them.

7 A conspiracy, once formed, is presumed to continue
8 until either its objective is accomplished or there is some
9 affirmative act of termination by its members or it is
12:08:59PM 10 otherwise terminated.

11 Mere cessation of activities without more is not an
12 affirmative act of termination. So once a person is found to
13 be a member of a conspiracy, he is presumed to continue his
14 membership in the venture until its termination unless it is
12:09:17PM 15 shown by some affirmative proof that he withdrew and
16 disassociated himself from it.

17 It is not necessary that the defendant be fully
18 informed as to the details or full scope of the conspiracy to
19 justify an inference of knowledge on his part. To have guilty
12:09:34PM 20 knowledge the defendant need not have known the full extent of
21 the conspiracy or all of its activities or all of its
22 participants.

23 It is not even necessary that the defendant know
24 every other member of the conspiracy. In fact, the defendant
12:09:47PM 25 may know only one other member of the conspiracy and still be

1 a co-conspirator.

2 Nor is it necessary that the defendant receive any
3 monetary benefit from his participation in the conspiracy,
4 have a financial stake in the outcome so long as he, in fact,
12:10:01PM 5 participated in the conspiracy in the manner I have explained.

6 The duration and extent of the defendant
7 Xavier Torres' participation has no bearing on the issue of
8 the defendant's guilt. He need not have joined the conspiracy
9 at the outset. He may have joined it for any purpose at any
12:10:24PM 10 time in its progress, and he will still be held responsible
11 for all that was done before he joined and all that was done
12 during the conspiracy's existence while he was a member.

13 Each member of the conspiracy may perform separate
14 and distinct acts and may perform them at different times.

12:10:41PM 15 Some conspirators play major roles, while others
16 play minor roles in the scheme. An equal role is not what the
17 law requires. In fact, even a single act may be sufficient to
18 draw the defendant Xavier Torres within the ambit of the
19 conspiracy, provided the proof establishes that the defendant
12:11:01PM 20 Xavier Torres was aware of the conspiracy, knowingly
21 associated with it and participated in it.

22 However, I want to caution you that the mere
23 association by one person with another does not make that
24 person a member of the conspiracy even when coupled with
12:11:16PM 25 knowledge that a conspiracy is taking place.

1 Mere presence at the scene of a crime, even coupled
2 with knowledge that a crime is taking place, is not sufficient
3 to support a conviction.

4 In other words, knowledge without participation is
12:11:29PM 5 not sufficient. What is necessary is that the defendant
6 Xavier Torres has participated in the conspiracy with
7 knowledge of its unlawful purposes and with an intent to aid
8 in the accomplishment of its unlawful objectives.

9 In sum, the defendant Xavier Torres, with an
12:11:49PM 10 understanding of the unlawful character of the conspiracy,
11 must have intentionally engaged, advised or assisted in it for
12 the purpose of furthering an illegal undertaking.

13 The defendant Xavier Torres thereby becomes a
14 knowing and willing participant in the unlawful agreement,
12:12:05PM 15 that is to say, a conspirator.

16 If you find that the Government has proven beyond a
17 reasonable doubt the two necessary elements for the narcotics
18 conspiracy charged in Count 1, then there is one more issue
19 that you must decide.

12:12:17PM 20 I have provided you with a special verdict form
21 asking you to fill in the amount of drugs for which the
22 defendant Xavier Torres is responsible.

23 The burden is on the Government to establish the
24 type and amount of drugs beyond a reasonable doubt. For a
12:12:28PM 25 narcotics conspiracy charge, a member of the conspiracy is

1 responsible for the amount of drugs that he himself agreed to
2 distribute or possess with intent to distribute.

3 In addition, that co-conspirator is also
4 responsible for all reasonably foreseeable amounts of drugs
12:12:45PM 5 that the other conspirators agreed to distribute or possess
6 with intent to distribute in furtherance of the criminal
7 activity that the co-conspirator jointly undertook with them.

8 In other words, a defendant is responsible for drug
9 amounts that are within the scope of the conspiracy that he
12:13:04PM 10 joined and that are reasonably foreseeable to him.

11 Remember, you should address this issue only if you
12 find that the defendant Xavier Torres guilty of conspiracy to
13 possess with intent to distribute and/or to distribute cocaine
14 and/or heroin. If you did not find that the Government has
12:13:23PM 15 proven both elements of Count 1, then do not complete this
16 form as to the amount of drugs.

17 If you find beyond a reasonable doubt the following
18 elements:

19 First, that within the Western District of New York
12:13:35PM 20 and elsewhere two or more persons entered into the unlawful
21 agreement charged in the indictment beginning in or about 2015
22 and through on or about January 29, 2018;

23 And, second, that the defendant Xavier Torres
24 knowingly and willfully became a member of the narcotics
12:13:51PM 25 conspiracy as charged in Count 1, then you must find the

1 defendant Xavier Torres guilty of narcotics conspiracy as
2 charged in Count 1.

3 On the other hand, if you find that the Government
4 has failed to prove any one of those elements beyond a
12:14:04PM 5 reasonable doubt, then you must find the defendant
6 Xavier Torres not guilty of narcotics conspiracy as charged in
7 Count 1.

8 In Count 2 the defendant Xavier Torres is charged
9 with using or carrying a firearm during and in relation to a
12:15:21PM 10 drug trafficking crime, or possessing a firearm in furtherance
11 of a drug trafficking crime.

12 Count 2 reads as follows: Beginning in or about
13 2015 and through on or about January 29, 2018, in the Western
14 District of New York, the defendant Xavier Torres a/k/a
12:15:40PM 15 Pistolita during and in relation to a drug trafficking crime
16 for which he may be prosecuted in a court of the United
17 States, that is, a violation of Title 21 of the United States
18 Code, Section 846, committed in the manner set forth in
19 Count 1, did knowingly and unlawfully use, carry, brandish,
12:16:06PM 20 and discharge and in furtherance of such crime did knowingly
21 and unlawfully possess, brandish and discharge, all in
22 violation of Title 18, United States Code, Section
23 924(c)(1)(A)(i), 924(c)(1)(A)(ii) , 924(c)(1)(A)(iii), and
24 Section 2.

12:16:39PM 25 The statute on this subject is Title 18, United

1 States Code, Section 924(c)(1), which reads as follows: Any
2 person who during and in relation to any drug trafficking
3 crime for which a person may be prosecuted in a court of the
4 United States uses or carries a firearm or who in furtherance
5 of any such crime possesses a firearm, shall be guilty of a
6 crime.

7 The Government must prove beyond a reasonable doubt
8 the following elements to sustain its burden of proving the
9 defendant Xavier Torres guilty of Count 2.

10 First, that the defendant Xavier Torres committed
11 the drug trafficking crime as charged in Count 1.

12 Second, that beginning in or about 2015 and through
13 on or about January 29, 2018, in the Western District of
14 New York, the defendant Xavier Torres knowingly used or
15 carried a firearm during and in relation to the commission of
16 the drug trafficking crime charged in Count 1, or that the
17 defendant Xavier Torres knowingly possessed a firearm in
18 furtherance of the drug trafficking crime charged in Count 1.

19 The first element the Government must prove beyond
20 a reasonable doubt is that the defendant Xavier Torres
21 committed a drug trafficking crime for which he might be
22 prosecuted in a court of the United States.

23 In connection with Count 2 the defendant
24 Xavier Torres is charged in Count 1 with conspiracy to possess
25 with intent to distribute, and/or to distribute cocaine and/or

1 heroin.

2 I instruct you that the offense of narcotics
3 conspiracy is a drug trafficking crime.

4 However, it is for you to determine whether the
12:18:29PM 5 Government has proven beyond a reasonable doubt that the
6 defendant Xavier Torres committed the crime of narcotics
7 conspiracy as charged in Count 1.

8 The second element the Government must prove beyond
9 a reasonable doubt in connection with Count 2 is that the
12:18:50PM 10 defendant Xavier Torres knowingly used or carried a firearm
11 during and in relation to the predicate crime or knowingly
12 possessed a firearm in furtherance of the commission of the
13 predicate crime.

14 A "firearm" is any weapon which will or is designed
12:19:06PM 15 to or may be readily converted to expel a projectile by the
16 action of an explosive.

17 In order to prove that the defendant Xavier Torres
18 used a firearm, the Government must prove beyond a reasonable
19 doubt an active employment of the firearm by the defendant
12:19:29PM 20 during and in relation to the commission of the drug
21 trafficking crime.

22 This does not mean that the defendant Xavier Torres
23 must actually fire or attempt to fire the weapon, although
24 those would obviously constitute use of the weapon.

12:19:43PM 25 Brandishing, displaying, or even referring to the

1 weapon so that others present knew that the defendant
2 Xavier Torres had the firearm available, if needed, all
3 constitute use of the firearm.

4 However, the mere possession of a firearm at or
12:19:57PM 5 near the site of the crime without active employment as I just
6 described is not sufficient to constitute a use of the
7 firearm.

8 In order to prove that the defendant Xavier Torres
9 carried a firearm the Government must prove beyond a
12:20:13PM 10 reasonable doubt that the defendant had the weapon within his
11 control in such a way that it furthered the commission of the
12 drug trafficking crime or was an integral part of the
13 commission of the crime.

14 The defendant Xavier Torres did not necessarily
12:20:30PM 15 have to hold the firearm physically, that is, have actual
16 possession of it on his person.

17 If you find that the defendant Xavier Torres had
18 dominion and control over the place where the firearm was
19 located and had the power and intention to exercise control
12:20:48PM 20 over the firearm in such a way that it furthered the
21 commission of the drug trafficking crime, you may find that
22 the Government has proven that the defendant Xavier Torres
23 carried the weapon.

24 As I mentioned earlier, the term "possess" means to
12:21:06PM 25 exercise authority, dominion or control over something. The

1 law recognizes different kinds of possession. In that regard,
2 possession includes both actual and constructive possession.

3 A person who has direct physical control of
4 something on or around his person is then in actual possession
12:21:26PM 5 of it.

6 A person who is not in actual possession but who
7 has both the power and the intention to exercise control over
8 something is in constructive possession of it.

9 Whenever the term "possess" is used in these
12:21:41PM 10 instructions, it means either actual or constructive
11 possession.

12 The law also recognizes that possession may be sole
13 or joint. If one person alone possesses it, that is sole
14 possession.

12:21:54PM 15 However, it is possible that more than one person
16 may have the power and intention to exercise control over a
17 firearm. That is called joint possession.

18 If you find that the defendant Xavier Torres had
19 such power and intention, then he possessed a firearm under
12:22:07PM 20 this element, even if he possessed it jointly with another.

21 Proof of ownership of the firearm is not required.

22 The term "in furtherance of" means in the act of
23 furthering or helping forward, promoting, advancing, or
24 assisting. The mere presence of a firearm in the area where a
12:22:29PM 25 criminal act occurs is not sufficient. Rather, the Government

1 must prove that the firearm was possessed to advance or
2 promote the specified criminal activity.

3 In deciding whether the Government has proven that
4 a firearm was possessed to advance or promote that criminal
12:22:45PM 5 activity, you may consider all of the evidence presented.

6 To satisfy the element, you must also find that the
7 defendant Xavier Torres knowingly possessed a firearm. This
8 means that he possessed the firearm purposely and voluntarily
9 and not by accident or mistake.

12:22:58PM 10 It also means that he knew that the weapon was a
11 firearm as we commonly use the word. However, the Government
12 is not required to prove that the defendant Xavier Torres knew
13 that he was breaking the law.

14 As you will see from the verdict sheet which I will
12:23:13PM 15 discuss in more detail later in these instructions, if you
16 find the defendant guilty of Count 2, you will also be
17 required to make findings as to whether the firearm was
18 brandished or discharged.

19 To "brandish" a firearm means to display all or
12:23:35PM 20 part of the firearm or otherwise make the presence of the
21 firearm known to another person in order to intimidate the
22 that person regardless of whether the firearm is directly
23 visible to that person.

24 To "discharge" a firearm means that the firearm is
12:23:51PM 25 actually fired.

1 If you find that the Government has proven beyond a
2 reasonable doubt the following elements:

3 First, that the defendant Xavier Torres committed
4 the drug trafficking crime as charged in Count 1;

12:24:05PM 5 And, second, that the defendant Xavier Torres
6 knowingly used or carried a firearm during and in relation to
7 the commission of the drug trafficking crime charged in
8 Count 1, or that the defendant Xavier Torres knowingly
9 possessed a firearm in furtherance of the drug trafficking
12:24:17PM 10 crime charged in Count 1, then you must find the defendant
11 Xavier Torres guilty of using or carrying a firearm during and
12 in relation to the commission of the drug trafficking crime or
13 possessing a firearm in furtherance of a drug trafficking
14 crime as charged in Count 2.

12:24:32PM 15 On the other hand, if you find that the Government
16 has failed to prove any one of those elements beyond a
17 reasonable doubt, then you must find the defendant
18 Xavier Torres not guilty of using or carrying a firearm during
19 and in relation to the commission of the drug trafficking
12:24:45PM 20 crime or possessing a firearm in furtherance of a drug
21 trafficking crime as charged in Count 2.

22 As an alternative method to determine the defendant
23 Xavier Torres' guilt for Count 2, using or carrying a firearm
24 during and in relation to the commission of a drug trafficking
12:25:49PM 25 crime charged in Count 1 or knowingly possessing a firearm in

1 furtherance of the drug trafficking crime charged in Count 1,
2 you should determine whether the defendant aided and abetted
3 another to commit that crime.

4 The aiding and abetting statute, Section 2 of Title
12:26:11PM 5 18 of the United States Code provides that whoever commits an
6 offense against the United States or aides or abets or
7 counsels, commands, or induces, or procures its commission or
8 willfully causes an act to be done is punishable as a
9 principal.

12:26:32PM 10 You should give these words their ordinary meaning.

11 To "counsel" means to give advice or recommend.

12 To "induce" means to lead or move by persuasion or
13 influence as to some action or state of mind.

14 To "procure" means to bring about an unscrupulous
12:26:50PM 15 or indirect means.

16 To "cause" means to bring something about, to
17 affect something.

18 The meaning of the term "willfully causes" can be
19 found in the answers to the following questions.

12:27:05PM 20 First, did the defendant take some action without
21 which the crime would not have occurred?

22 Second, did the defendant intend that the crime
23 would actually be committed by others?

24 If you are persuaded beyond a reasonable doubt that
12:27:18PM 25 the answer to both of these questions is yes, then the

1 defendant is guilty of the crime charged just as if he had
2 actually committed it.

3 Under the statute a defendant may be convicted of
4 aiding and abetting a given crime where the Government proves
12:27:34PM 5 that the underlying crime was committed by a person other than
6 the defendant, the defendant knew of the crime, and the
7 defendant acted with the intent to contribute to the success
8 of the underlying crime.

9 As a result, it is not necessary for the Government
12:27:47PM 10 to show that the defendant himself physically committed a
11 crime with which he is charged in order for you to find that
12 the defendant is guilty of the crime.

13 A person who aides or abets another to commit an
14 offense is just as guilty of that offense as if he committed
12:28:01PM 15 it himself.

16 The first requirement is that you find that another
17 person committed the substantive offense charged in the count.
18 Obviously, no one can be convicted of aiding and abetting the
19 criminal acts of another if no crime was committed by the
12:28:26PM 20 other person in the first place.

21 But if you do find that the substantive crime
22 charged in a count was committed, then you must consider
23 whether the defendant Xavier Torres aided and abetted the
24 commission of the crime.

12:28:38PM 25 To aid and abet another to commit a crime it is

1 necessary that the defendant Xavier Torres willfully and
2 knowingly associated himself in some way with the crime, and
3 that he willfully and knowingly sought by some act to make the
4 crime succeed.

12:28:53PM 5 To establish that the defendant participated in the
6 commission of the crime, the Government must prove that the
7 defendant Xavier Torres engaged in some affirmative conduct or
8 overt act for the specific purpose of bringing about that
9 crime.

12:29:06PM 10 Participation in a crime is willful if action is
11 taken voluntarily and intentionally or in the case of a
12 failure to act, with the specific intent to fail to do
13 something the law requires to be done, that is to say, with a
14 bad purpose either to disobey or to disregard the law.

12:29:24PM 15 Mere presence of the defendant Xavier Torres where
16 a crime is being committed, even coupled with knowledge by the
17 defendant that a crime is being committed or the mere
18 acquiescence by the defendant in the criminal conduct of
19 others, even with the guilty knowledge, is not sufficient to
12:29:42PM 20 establish aiding and abet.

21 An aider and abetter must have some interest in the
22 criminal venture. To determine whether the defendant
23 Xavier Torres aided or abetted the commission of a substantive
24 crime charged in a count of the indictment, ask yourself these
12:30:02PM 25 questions for Count 2, using or carrying a firearm during and

1 in relation to the commission of the drug trafficking crime
2 charged in Count 1, or knowingly possessing a firearm in
3 furtherance of the drug trafficking crime charged in Count 1.

4 Did the defendant participate in the crime charged
12:30:21PM 5 as something he wished to bring about? Did he associate
6 himself with the criminal venture knowingly and willfully?
7 Did he seek by his actions to make the criminal venture
8 succeed?

9 If the answer to those questions is yes with
12:30:37PM 10 respect to Count 2, using or carrying a firearm during and in
11 relation to the commission of the drug trafficking crime
12 charged in Count 1, or knowingly possessing a firearm in
13 furtherance of the drug trafficking crime charged in Count 1,
14 then the defendant Xavier Torres is an aider and abetter and,
12:30:56PM 15 therefore, guilty of using or carrying a firearm during and in
16 relation to the commission of the drug trafficking crime
17 charged in Count 1, or knowingly possessing a firearm in
18 furtherance of the drug trafficking crime charged in Count 1.

19 If, on the other hand, your answer to any of these
12:31:14PM 20 three questions is no with respect to Count 2, then the
21 defendant Xavier Torres is not an aider and abetter and you
22 must find that the Government has failed to establish his
23 guilt on Count 2 based on this theory of liability.

24 There is another method which you may evaluate the
12:31:36PM 25 possibility of guilt of the defendant Xavier Torres for the

1 substantive crime charged in Count 2, using or carrying a
2 firearm during and in relation to the commission of the drug
3 trafficking crime charged in Count 1, or knowingly possessing
4 a firearm in furtherance of the drug trafficking crime charged
12:31:52PM 5 in Count 1, even if you do not find that the Government has
6 satisfied its burden of proof with respect to each element of
7 that count as to the defendant.

8 If in light of my instructions you find beyond a
9 reasonable doubt that the defendant Xavier Torres was a member
12:32:07PM 10 of the conspiracy charged in Count 1 of the indictment and,
11 thus, guilty on the narcotics conspiracy, then you may also
12 but you are not required to find the defendant guilty of the
13 substantive crime for which he is charged in Count 2 provided
14 you find beyond a reasonable doubt each of the following
12:32:21PM 15 elements with respect to the substantive count:

16 First, that the crime charged in Count 2 was
17 committed;

18 Second, that the person or persons you find
19 actually committed the crime were members of the narcotics
12:32:40PM 20 conspiracy you found existed;

21 Third, that the crime charged in Count 2 was
22 committed pursuant to the common plan and understanding you
23 found to exist among the conspirators;

24 Fourth, that the defendant Xavier Torres was a
12:33:04PM 25 member of the narcotics conspiracy charged in Count 1 at the

1 time the crime charged in Count 2 was committed;

2 And, fifth, that the defendant Xavier Torres could
3 have reasonably foreseen that the substantive crime in Count 2
4 might be committed by his co-conspirators.

12:33:24PM 5 If you find all five of these elements to exist
6 beyond a reasonable doubt with respect to the substantive
7 count charged in Count 2, then you may find the defendant
8 Xavier Torres guilty of the substantive crime charged against
9 him even though he did not personally participate in the acts
12:33:38PM 10 constituting the crime or did not have actual knowledge of it.

11 The reason for this rule is simply that a
12 co-conspirator who commits a substantive crime pursuant to the
13 conspiracy is deemed to be the agent of the other
14 conspirators.

12:33:53PM 15 Therefore, all of the co-conspirators must bear
16 criminal responsibility for the commission of the substantive
17 crimes.

18 If, however, you are not satisfied as to the
19 existence of any of these five elements with respect to
12:34:06PM 20 Count 2, then you may not find the defendant Xavier Torres
21 guilty of Count 2 unless the Government proves beyond a
22 reasonable doubt that the defendant personally committed or
23 aided and abetted the commission of Count 2.

24 Good news is we're almost done. Members of the
12:34:51PM 25 jury, you may not draw any inference, favorable or

1 unfavorable, toward the Government or the defendant from the
2 fact that any persons in addition to the defendant are not on
3 trial here.

4 You may also not speculate as to the reasons why
12:35:06PM 5 other persons are not on trial. Those matters are wholly
6 outside your concern and have no bearing on your function as
7 jurors.

8 You're about to decide this case on whether or not
9 the Government has proven beyond a reasonable doubt the guilt
12:35:25PM 10 of this defendant. You're not being asked whether any other
11 person has been proven guilty. Your verdict should be based
12 solely upon the evidence or lack of evidence as to this
13 defendant in accordance with my instructions to you on the law
14 and without regard to the guilt of other persons that have or
12:35:44PM 15 have not been proven.

16 You have to consider these crimes separately and
17 the evidence related to the crimes separately, but as I've
18 specified a number of times, you must find the defendant
19 guilty beyond a reasonable doubt of Count 1 before you can
12:36:02PM 20 find him guilty under any theory on Count 2.

21 I remind you that when you deliberate it will be
22 your duty to weigh and to evaluate all the evidence received
23 in this case to the facts as you find them, you apply the law
24 as I instructed you whether you agree with it or not.

12:36:23PM 25 You must decide this case solely on the evidence

1 and the law before you. And you must not be influenced by any
2 personal likes or dislikes, opinions, prejudices, sympathies
3 or biases, including unconscious bias.

4 Unconscious bias are stereotypes, attitudes or
12:36:43PM 5 preferences that people may consciously reject but may be
6 expressed without conscious awareness, control or intention.
7 Like conscious bias, unconscious bias, too, can effect how we
8 evaluate information and make decisions.

9 I'm going to provide you a special verdict sheet
12:37:03PM 10 which will outline your options during your deliberations. As
11 I've said, Count 1 charges the defendant Xavier Torres also
12 known as Pistolita with conspiracy to possess with intent to
13 distribute, and/or to distribute, 5 kilograms or more of
14 cocaine and/or 1 kilogram or more of heroin.

12:37:25PM 15 The amount of the controlled substances involved is
16 unrelated to the issue of whether the defendant Xavier Torres
17 is, in fact, guilty of narcotics conspiracy as charged in
18 Count 1.

19 You will note, however, that the verdict form
12:37:40PM 20 requires that in the event you determine the defendant
21 Xavier Torres to be guilty of the conspiracy charged in
22 Count 1, you must determine whether the weight was, one , for
23 a mixture or substance containing cocaine, either at least 5
24 kilograms, or at least 500 grams but less than 5 kilograms, or
12:38:05PM 25 less than 500 grams;

1 And, two, for a mixture or substance containing
2 heroin either at least 1 kilogram, or at least 100 grams but
3 less than 1 kilogram, or less than 100 grams.

4 Count 2 charges the defendant Xavier Torres with
12:38:28PM 5 using or carrying firearms during and in relation to, or
6 possessing firearms in furtherance of a drug trafficking
7 crime.

8 The verdict form also requires that in the event
9 you determine the defendant Xavier Torres to be guilty of the
12:38:42PM 10 violation charged in Count 2, you must also determine whether
11 the firearm was brandished or discharged.

12 The verdict form has a place for you to indicate
13 your findings in this regard.

14 Your verdict with regard to all of the questions
12:38:56PM 15 that you answer on the verdict sheet must be unanimous.

16 I think once you see the verdict sheet it will make
17 a lot more sense to you once you read through the verdict
18 sheet. But if after doing so you have any questions about the
19 verdict sheet, don't hesitate to ask the Court and I'll
12:39:19PM 20 explain that to you.

21 Your verdict must represent the considered judgment
22 of each juror. In order to return a verdict it is necessary
23 that each juror agree to the verdict. Your verdict must be
24 unanimous.

12:39:34PM 25 The punishment provided by law for the offense

1 charged in the indictment is a matter exclusively within the
2 province of the Court. It should never be considered by the
3 jury in any way in arriving at an impartial verdict.

4 Your verdict must be based solely on the law as
12:39:50PM 5 I've explained it to you and the evidence as you've heard it.
6 Your verdict must not be effected by sympathy or prejudice you
7 may have for or against the defendant or the Government.

8 It's your duty as jurors to consult with each
9 other, to deliberate with a view toward reaching an agreement
12:40:08PM 10 if you can do so without violation to your individual
11 judgment. Each of you must decide the case for yourselves but
12 only after an impartial consideration of the evidence in the
13 case with the fellow jurors.

14 In the course of your deliberations you should not
12:40:23PM 15 hesitate to re-examine your views and change your opinion if
16 convinced it is erroneous.

17 But do not surrender your honest conviction as to
18 the weight and effect of the evidence solely because of the
19 opinion of your fellow jurors or for the mere purpose of
12:40:39PM 20 returning a verdict.

21 Remember, at all times you are not partisans. You
22 are judges, judges of the facts. Your sole interest is to
23 seek the truth from the evidence in the case.

24 Now, during your deliberations if you want to see
12:40:55PM 25 any of the exhibits received in evidence, that can be provided

1 to you. Although both the weapons and the narcotics
2 themselves will be presented to you only in the courtroom.

3 You want to see any of the photographs, those can
4 be presented to you or some of the other tangible evidence
12:41:11PM 5 that's not either narcotics or weapons.

6 If you want to have any testimony read back to you,
7 I'd ask you to specify with as much detail as possible. That
8 can be read back to you. Please specify the particular
9 witness and the part of the testimony you want read back to
12:41:29PM 10 you.

11 If you want any of the law read back to you, that
12 can be done as well.

13 If you ask any questions either for law, evidence,
14 or testimony, do not indicate the status of your
12:41:45PM 15 deliberations. Simply ask your questions.

16 While you deliberate you may not use any electronic
17 devices such as a cell phone, iPhone, computer, iPad and any
18 such materials will be collected by the court security
19 officers.

12:42:06PM 20 You're not to communicate with anybody outside this
21 case regarding this case or conduct any research about the
22 case. You cannot talk to anybody except the other jurors
23 during the course of the deliberations.

24 If for any reason you become separated and all 12
12:42:23PM 25 jurors not together, you have to stop your deliberations and

1 only continue those when all 12 jurors are reassembled.

2 I noticed some of you took notes. Your notes are
3 only an aid to your memory. They must not take precedence
4 over your independent recollection. The jurors who chose not
12:42:42PM 5 to take notes must rely on their own independent recollection
6 and must not be influenced by the notes that a juror took.

7 Notes are not a substitute for the recorded
8 transcript of the testimony or any exhibits received in
9 evidence. If you have any discrepancy or question regarding
12:42:58PM 10 your notes and your recollection, you want that read back,
11 that can be done.

12 Notes are confidential. They will not be available
13 for inspection or review by any party. After the jury has
14 rendered its verdict, the notes will be collected and they
12:43:14PM 15 will be destroyed.

16 Juror No. 1, since you were the first person
17 selected you will serve as the foreperson of the jury. It
18 will be your duty to announce the verdict of the jury if and
19 when you do reach a verdict. It will be also your duty to
12:43:29PM 20 sign any communications from the jury to the Court.

21 The signature of the foreperson indicates that the
22 note comes from the jury.

23 Again, I remind you that your verdict on each of
24 the counts must be unanimous.

12:43:48PM 25 And, again, I'll provide you with a special verdict

1 form. If you have any questions about that, I can respond to
2 that.

3 We have in this case four alternate jurors. You
4 will be kept in a private and convenient room to await the
12:44:00PM 5 rendition of the trial jury's verdict. While you await that
6 verdict I would ask you not discuss the case or allow anybody
7 to discuss the case with you.

8 Can we have a sidebar?

9 (WHEREUPON, a discussion was held at side bar out
12:44:20PM 10 of the hearing of the jury.)

11 **THE COURT:** Government have any objections or
12 requests?

13 **MR. MARANGOLA:** No, Your Honor. Thank you.

14 **THE COURT:** Mr. Verrillo?

12:44:27PM 15 **MR. VERRILLO:** Judge, I just want to note that I had
16 originally objected to the *Pinkerton* charges and I continue
17 that objection.

18 **THE COURT:** Yes, you've particularly objected to the
19 *Pinkerton* charge and aiding and abetting charge, and any
12:44:42PM 20 previous objections will be noted for the record.

21 **MR. VERRILLO:** Thank you.

22 (WHEREUPON, side bar discussion concluded.)

23 **THE COURT:** Please swear in the court security
24 officer.

12:44:59PM 25 (WHEREUPON, the court security officer was sworn).

1 **THE COURT:** Members of the jury, I'm about to submit
2 this case to you for your final determination. As I
3 previously stated, the law and your oath require that you
4 render a fair and impartial verdict without fear, favor or
12:45:33PM 5 sympathy. Now take this case in fulfillment of your oath in
6 accordance with the instructions I provided to you a true and
7 impartial verdict render.

8 Jury may step down and begin your final
9 deliberations. I believe that lunch should be here or will be
12:45:50PM 10 here shortly for you as well. The jury may step down.

11 **(WHEREUPON,** the jury was excused at 12:47 p.m.)

12 **THE COURT:** Both parties indicated they have no
13 objection to the verdict sheet we marked as Court Exhibit 2
14 and will submit it to the jury. I think we did in the
12:46:48PM 15 previous case where there were photographs, everything was
16 done electronically here.

17 Do you have hard copies of the photographs?

18 **MR. MARANGOLA:** We do, Your Honor, yes.

19 **THE COURT:** Okay.

12:46:56PM 20 **MR. MARANGOLA:** Ms. McCreedy put the hard copies
21 that have been received into evidence in a binder.

22 **THE COURT:** Okay. Any objection providing those
23 photographs to the jury if they request them?

24 **MR. MARANGOLA:** No, Your Honor.

12:47:08PM 25 **MR. VERRILLO:** That's all right, Your Honor, yes.

1 **THE COURT:** So the photographs -- there was also an
2 aerial map, I believe, can be provided to the jury. The
3 narcotics, as I indicated, will be shown in open court, and
4 the weapons in open court.

12:47:25PM 5 There's also, I think, some certificates of
6 conviction. Do you have those in hard copies as well?

7 **MR. MARANGOLA:** We do, Judge.

8 **THE COURT:** Those can be provided to the jury.

9 There's a couple cell phones, just one maybe. A
12:47:40PM 10 couple cell phones.

11 **MR. MARANGOLA:** A few extractions. Those are -- we
12 have those as well.

13 **THE COURT:** Okay. Those as well can be presented to
14 the jury. We'll wait and see what the requests are, but just
12:47:50PM 15 so we know in advance. Okay.

16 **MR. MARANGOLA:** Judge, the only additional thing is
17 we have Court Exhibit 1, the stipulation. So I think if they
18 ask for it we should allow them to have it since it was read
19 into evidence and referred to on a number of separate
12:48:11PM 20 occasions.

21 I did right before the Court began its charge look
22 and there were four items, four exhibits listed in the
23 stipulation that were not referred to in court, we didn't
24 offer them. So we can redact those four items and then
12:48:29PM 25 provide that copy to the Court and a copy to defense counsel

1 so that that can also be provided.

2 **THE COURT:** I want to confirm what I have is not
3 received.

4 **MR. MARANGOLA:** I can tell the exhibit numbers.

12:48:47PM 5 **THE COURT:** 230 on page 4?

6 **MR. MARANGOLA:** Yes.

7 **THE COURT:** Right?

8 **MR. MARANGOLA:** Yes.

9 **THE COURT:** Is the first one --

12:48:54PM 10 **MR. MARANGOLA:** The first one is actually on page 1,
11 347.

12 **THE COURT:** Okay. 347 on page 1 of the stipulation.

13 **MR. MARANGOLA:** Yes.

14 **THE COURT:** Page 4, 230. Then page 8, 353; is that
12:49:31PM 15 correct?

16 **MR. MARANGOLA:** Yes. And 355.

17 **THE COURT:** And 355 also on page 8.

18 **MR. MARANGOLA:** Yes.

19 **THE COURT:** Mr. Verrillo, do you have any objection,
12:49:46PM 20 if the jury requests it, the stipulation being presented to
21 them for their review with those redactions?

22 **MR. VERRILLO:** Probably be more expeditious to do it
23 that way than to have it read from the transcript. So I'm
24 okay with that.

12:50:00PM 25 **THE COURT:** If they make that request we will

1 provide to them a redacted copy of Court Exhibit 1, which
2 would eliminate the last paragraph on page 1 regarding
3 Exhibit 247; third paragraph on page 4 related to Exhibit 230;
4 and the first and second paragraphs on page 8 relating to
5 Exhibits 353 and 355.

6 Thank you, we'll stand in recess.

7 **MR. MARANGOLA:** Thank you, Your Honor.

8 (**WHEREUPON**, there was a pause in the proceeding).

9 (**WHEREUPON**, the defendant is present).

03:15:36PM 10 **THE COURT:** We have a note from the jury reads as
11 follows: Could we please have Count 2 of the law reread to us?

12 We need clarification on the three ways the burden
13 of proof can be met. Do these charges such as brandishing
14 need to be committed directly by Torres or only someone
03:21:23PM 15 involved in the conspiracy?

16 I think rereading the charge will answer both of
17 the questions, both the charges, aid and abet and *Pinkerton*.

18 **MR. MARANGOLA:** Agreed, Your Honor.

19 **THE COURT:** Mr. Verrillo?

03:21:35PM 20 **MR. VERRILLO:** Yes, I understand.

21 **THE COURT:** Bring the jury out and I'll reread that.

22 (**WHEREUPON**, the jury is present).

23 **THE COURT:** Members of the jury, I do have your
24 question which reads as follows: Could we please have Count 2
03:25:10PM 25 of the law reread to us? We need clarification on the three

1 ways the burden of proof can be met. Do these charges such as
2 brandishing need to be committed directly by Torres or only
3 someone involved in the conspiracy?

4 I'm going to reread you those charges, alternative
03:25:34PM 5 theories, and I think that should answer both your questions.
6 Please don't hesitate to send a second note after I read these
7 if you need clarification.

8 The defendant Xavier Torres is charged in Count 2
9 with using or carrying a firearm during and in relation to a
03:25:52PM 10 drug trafficking crime or possessing a firearm in furtherance
11 of a drug tracking crime.

12 Count 2 reads as follows: Beginning in or about
13 2015 and through on or about January 29th, 2018, in the
14 Western District of New York, the defendant Xavier Torres also
03:26:16PM 15 known as Pistolita, during and in relation to a drug
16 trafficking crime for which he may be prosecuted in a court of
17 the United States, that is a violation of Title 21, United
18 States Code, Section 846, committed in the manner set forth in
19 Count 1 did knowingly and unlawfully use, carry, brandish and
03:26:43PM 20 discharge and in furtherance of such crime did knowingly and
21 unlawfully possess, brandish and discharge firearms all in
22 violation of Title 18, United States Code, Section
23 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), and
24 Section 2.

03:27:12PM 25 The statute on this subject is Title 18, United

1 States Code, Section 924(c)(1), which reads as follows: Any
2 person who during and in relation to any drug trafficking
3 crime for which a person may be prosecuted in a court of the
4 United States uses or carries a firearm or who in furtherance
03:27:36PM 5 of any such crime possesses a firearm shall be guilty of a
6 crime.

7 The Government must prove each of the following
8 elements beyond a reasonable doubt to sustain its burden of
9 proving the defendant Xavier Torres guilty of Count 2.

03:27:54PM 10 First, that the defendant Xavier Torres committed
11 the drug trafficking crime as charged in Count 1.

12 And, two, that beginning in or about 2015 and
13 through on or about January 29, 2018, in the Western District
14 of New York, the defendant Xavier Torres knowingly used or
03:28:13PM 15 carried a firearm during and in relation to the commission of
16 the drug trafficking crime charged in Count 1, or that the
17 defendant Xavier Torres knowingly possessed a firearm in
18 furtherance of the drug trafficking crime charged in Count 1.

19 The first element the Government must prove beyond
03:28:40PM 20 a reasonable doubt is that the defendant Xavier Torres
21 committed a drug trafficking crime for which he might be
22 prosecuted in a court of the United States.

23 In connection with Count 2 the defendant
24 Xavier Torres is charged in Count 1 with conspiracy to possess
03:28:57PM 25 with intent to distribute, and/or to distribute, cocaine

1 and/or heroin.

2 I instruct you that the offense of narcotics
3 conspiracy is a drug trafficking crime.

4 However, it is for you to determine whether the
03:29:08PM 5 Government has proven beyond a reasonable doubt that the
6 defendant Xavier Torres committed the crime of narcotics
7 conspiracy as charged in Count 1.

8 The second element the Government must prove beyond
9 a reasonable doubt in connection with Count 2 is that the
03:29:31PM 10 defendant Xavier Torres knowingly used or carried a firearm
11 during and in relation to the predicate crime, or knowingly
12 possessed a firearm in furtherance of the commission of the
13 predicate crime.

14 A "firearm" is any weapon which will or is designed
03:29:47PM 15 to or may be readily converted to expel a projectile by the
16 action of an explosive.

17 In order to prove that the defendant Xavier Torres
18 used a firearm, the Government must prove beyond a reasonable
19 doubt an active employment of the firearm by the defendant
03:30:10PM 20 during and in relation to the commission of the drug
21 trafficking crime.

22 This does not mean that the defendant Xavier Torres
23 must actually fire or attempt to fire the weapon, although
24 those would obviously constitute use of the weapon.

03:30:28PM 25 Brandishing, displaying, or even referring to the

1 weapon so that others present knew that the defendant
2 Xavier Torres had the firearm available, if needed, all
3 constitute use of the firearm.

4 However, the mere possession of a firearm at or
03:30:42PM 5 near the site of the crime without active employment as I just
6 described is not sufficient to constitute a use of the
7 firearm.

8 In order to prove that the defendant Xavier Torres
9 carried a firearm, the Government must prove beyond a
03:30:56PM 10 reasonable doubt that the defendant had the weapon within his
11 control in such a way that it furthered the commission of the
12 drug trafficking crime or was an integral part of the
13 commission of the crime.

14 The defendant Xavier Torres did not necessarily
03:31:09PM 15 have to hold the firearm physically, that is, have actual
16 possession of it on his person.

17 If you find that the defendant Xavier Torres had
18 dominion and control over the place where the firearm was
19 located, and had the power and intention to exercise control
03:31:29PM 20 over the firearm in such a way that it furthered the
21 commission of the drug trafficking crime, you may find that
22 the Government has proven that the defendant Xavier Torres
23 carried the weapon.

24 As I mentioned earlier, the term "possess" means to
03:31:44PM 25 exercise authority, dominion or control over something.

1 The law recognizes different kinds of possession.
2 In that regard, possession includes both actual and
3 constructive possession.

4 A person who has direct physical control of
03:32:01PM 5 something on or around his person is then in actual possession
6 of it.

7 A person who is not in actual possession, but who
8 has both the power and the intention to exercise control over
9 something is in constructive possession of it.

03:32:17PM 10 Whenever the term "possess" is used in these
11 instructions, it means either actual or constructive
12 possession.

13 The law also recognizes that possession may be sole
14 or joint. If one person alone possesses it, that is sole
03:32:38PM 15 possession. However, it is possible that more than one person
16 may have the power and intention to exercise control over a
17 firearm. This is called joint possession.

18 If you find that the defendant Xavier Torres had
19 such power and intention, then he possessed a firearm under
03:32:53PM 20 this element, even if he possessed it jointly with another.

21 Proof of ownership of the firearm is not required.

22 The term "in furtherance of" means in the act of
23 furthering or helping forward, promoting, advancing or
24 assisting. The mere presence of a firearm in the area where a
03:33:13PM 25 criminal act occurs is not sufficient. Rather, the Government

1 must prove that the firearm was possessed to advance or
2 promote the specified criminal activity.

3 In deciding whether the Government has proven that
4 a firearm was possessed to advance or promote that criminal
03:33:31PM 5 activity, you may consider all of the evidence presented.

6 To satisfy this element, you must also find that
7 the defendant Xavier Torres knowingly possessed a firearm.
8 This means that he possessed the firearm purposely and
9 voluntarily, and not by accident or mistake.

03:33:46PM 10 It also means that he knew that the weapon was a
11 firearm as we commonly use the word. However, the Government
12 is not required to prove that the defendant Xavier Torres knew
13 that he was breaking the law.

14 As you will see from the verdict sheet which I will
03:34:01PM 15 discuss in more detail later in these instructions, if you
16 find the defendant guilty of Count 2, you will also be
17 required to make findings as to whether the firearm was
18 brandished or discharged.

19 To "brandish" a firearm means to display all or
03:34:23PM 20 part of the firearm, or otherwise make the presence of the
21 firearm known to another person in order to intimidate that
22 person, regardless of whether the firearm is directly visible
23 to that person.

24 To "discharge" a firearm means that the firearm is
03:34:40PM 25 actually fired.

1 If you find that the Government has proven beyond a
2 reasonable doubt the following elements:

3 First, that the defendant Xavier Torres committed
4 the drug trafficking crime as charged in Count 1;

03:34:56PM 5 And, second, that the defendant Xavier Torres
6 knowingly used or carried a firearm during and in relation to
7 the commission of the drug trafficking crime charged in
8 Count 1, or that the defendant Xavier Torres knowingly
9 possessed a firearm in furtherance of the drug trafficking
03:35:09PM 10 crime charged in Count 1, then you must find the defendant
11 Xavier Torres guilty of using or carrying a firearm during and
12 in relation to the commission of the drug trafficking crime or
13 possessing a firearm in furtherance of a drug trafficking
14 crime as charged in Count 2.

03:35:24PM 15 On the other hand, if you find that the Government
16 has failed to prove any one of those elements beyond a
17 reasonable doubt, then you must find the defendant
18 Xavier Torres not guilty of using or carrying a firearm during
19 and in relation to the commission of the drug trafficking
03:35:39PM 20 crime or possessing a firearm in furtherance of a drug
21 trafficking crime as charged in Count 2.

22 As an alternative method to determine the defendant
23 Xavier Torres' guilt for Count 2, using or carrying a firearm
24 during and in relation to the commission of the drug
03:36:30PM 25 trafficking crime charged in Count 1, or knowingly possessing

1 a firearm in furtherance of the drug trafficking crime charged
2 in Count 1, you should determine whether the defendant aided
3 and abetted another to commit that crime.

4 The aiding and abetting statute, Section 2 of
03:36:46PM 5 Title 18 of the United States Code, provides that whoever
6 commits an offense against the United States or aides or abets
7 or counsels, commands, or induces, or procures its commission,
8 or willfully causes an act to be done is punishable as a
9 principal.

03:37:04PM 10 You should give these words their ordinary meaning.

11 To "counsel" means to give advice or recommend.

12 To "induce" means to lead or move by persuasion or
13 influence as to some action or state of mind.

14 To "procure" means to bring about by unscrupulous
03:37:25PM 15 or indirect means.

16 To "cause" means to bring something about, to
17 affect something.

18 The meaning of the term "willfully causes" can be
19 found in the answers to the following questions:

03:37:41PM 20 First, did the defendant take some action without
21 which the crime would not have occurred?

22 Second, did the defendant intend that the crime
23 would be actually committed by others?

24 If you are persuaded beyond a reasonable doubt that
03:37:55PM 25 the answer to both of these questions is yes, then the

1 defendant is guilty of the crime charged just as if he had
2 actually committed it.

3 Under this statute a defendant may be convicted of
4 aiding and abetting a given crime where the Government proves
03:38:10PM 5 that the underlying crime was committed by a person other than
6 the defendant, the defendant knew of the crime, and the
7 defendant acted with the intent to contribute to the success
8 of the underlying crime.

9 As a result, it is not necessary for the Government
03:38:27PM 10 to show that the defendant himself physically committed a
11 crime with which he is charged in order for you to find that
12 the defendant is guilty of the crime. A person who aides or
13 abets another to commit an offense is just as guilty of that
14 offense as if he committed it himself.

03:38:49PM 15 The first requirement is that you find that another
16 person committed the substantive offense charged in the count.
17 Obviously, no one can be convicted of aiding and abetting the
18 criminal acts of another if no crime was committed by the
19 other person in the first place.

03:39:04PM 20 But if you do find that the substantive crime
21 charged in a count was committed, then you must consider
22 whether the defendant Xavier Torres aided and abetted the
23 commission of the crime.

24 To aid and abet another to commit a crime, it is
03:39:18PM 25 necessary that the defendant Xavier Torres willfully and

1 knowingly associated himself in some way with the crime, and
2 that he willfully and knowingly sought by some act to make the
3 crime succeed.

4 To establish that the defendant participated in the
03:39:31PM 5 commission of the crime, the Government must prove that the
6 defendant Xavier Torres engaged in some affirmative conduct or
7 overt act for the specific purpose of bringing about that
8 crime.

9 Participation in a crime is willful if action is
03:39:44PM 10 taken voluntarily and intentionally or in the case of a
11 failure to act, with the specific intent to fail to do
12 something the law requires to be done; that is to say, with a
13 bad purpose either to disobey or to disregard the law.

14 The mere presence of the defendant Xavier Torres
03:40:01PM 15 where a crime is being committed, even coupled with knowledge
16 by the defendant that a crime is being committed, or the mere
17 acquiescence by the defendant in the criminal conduct of
18 others, even with guilty knowledge, is not sufficient to
19 establish aiding and abetting.

03:40:23PM 20 An aider and abetter must have some interest in the
21 criminal venture. To determine whether the defendant
22 Xavier Torres aided or abetted the commission of a substantive
23 crime charged in a count of the indictment, ask yourself these
24 questions for Count 2, using or carrying a firearm during and
03:40:40PM 25 in relation to the commission of the drug trafficking crime

1 charged in Count 1, or knowingly possessing a firearm in
2 furtherance of the drug trafficking crime charged in Count 1:

3 Did he participate in the crime charged as
4 something he wished to bring about? Did he associate himself
03:40:58PM 5 with the criminal venture knowingly and willfully? Did he
6 seek by his actions to make the criminal venture succeed?

7 If the answer to those three questions is yes with
8 respect to Count 2, using or carrying a firearm during and in
9 relation to the commission of the drug trafficking crime

03:41:18PM 10 charged in Count 1, or knowingly possessing a firearm in
11 furtherance of the drug trafficking crime charged in Count 1,
12 then the defendant Xavier Torres is an aider and abetter and,
13 therefore, guilty of using or carrying a firearm during and in
14 relation to the commission of the drug trafficking crime

03:41:46PM 15 charged in Count 1, or knowingly possessing a firearm in
16 furtherance of the drug trafficking crime charged in Count 1.

17 If, on the other hand, your answer to any of these
18 three questions is no with respect to Count 2, then the
19 defendant Xavier Torres is not an aider and abetter and you
03:42:01PM 20 must find that the Government has failed to establish his
21 guilt on Count 2 based on this theory of liability.

22 There is another method by which you may evaluate
23 the possible guilt of the defendant Xavier Torres for the
24 substantive crime charged in Count 2, using or carrying a
03:42:39PM 25 firearm during and in relation to the commission of the drug

1 trafficking crime charged in Count 1, or knowingly possessing
2 a firearm in furtherance of the drug trafficking crime charged
3 in Count 1, even if you do not find that the Government has
4 satisfied its burden of proof with respect to each element of
03:42:55PM 5 that count as to the defendant.

6 If in light of my instructions you find beyond a
7 reasonable doubt that the defendant Xavier Torres was a member
8 of the conspiracy charged in Count 1 of the indictment and,
9 thus, guilty on the narcotics conspiracy count, then you may
03:43:08PM 10 also but you are not required to, find the defendant guilty of
11 the substantive crime for which he is charged in Count 2
12 provided you find beyond a reasonable doubt each of the
13 following elements with respect to the substantive count:

14 First, that the crime charged in Count 2 was
03:43:25PM 15 committed;

16 Second, that the person or persons you find
17 actually committed the crime were members of the narcotics
18 conspiracy you found existed;

19 Third, that the crime charged in Count 2 was
03:43:35PM 20 committed pursuant to the common plan and understanding you
21 found to exist among the conspirators;

22 Fourth, that the defendant Xavier Torres was a
23 member of the narcotics conspiracy charged in Count 1 at the
24 time the crime charged in Count 2 was committed;

03:43:55PM 25 And, fifth, that the defendant Xavier Torres could

1 have reasonably foreseen that the substantive crime in Count 2
2 might be committed by his co-conspirators.

3 If you find all five of these elements to exist
4 beyond a reasonable doubt with respect to the substantive
03:44:09PM 5 count charged in Count 2, then you may find the defendant
6 Xavier Torres guilty of the substantive crime charged against
7 him, even though he did not personally participate in the acts
8 constituting the crime or did not have actual knowledge of it.

9 The reason for this rule is simply that a
03:44:29PM 10 co-conspirator who commits a substantive crime pursuant to the
11 conspiracy is deemed to be the agent of the other
12 conspirators. Therefore, all of the co-conspirators must bear
13 the criminal responsibility for the commission of the
14 substantive crimes.

03:44:45PM 15 If, however, you are not satisfied as to the
16 existence of any of these five elements with respect to
17 Count 2, then you may not find the defendant Xavier Torres
18 guilty of Count 2 unless the Government proves beyond a
19 reasonable doubt that the defendant personally committed or
03:45:01PM 20 aided and abetted the commission of Count 2.

21 Ladies and gentlemen, that does complete the read
22 back of Count 2 and the alternate theories that you requested.
23 Again if you have any questions about that or any other
24 portion of the law, don't hesitate to reask your questions.

03:45:52PM 25 At this point the jury may step down and resume

1 your deliberations.

2 (WHEREUPON, the jury was excused at 3:47 p.m.)

3 **THE COURT:** We'll stand in recess.

4 (WHEREUPON, there was a pause in the proceeding).

04:30:59PM 5 (WHEREUPON, the defendant is present).

6 **THE COURT:** The jury's indicated they have reached a
7 verdict. We'll bring the jury out and get the verdict.

8 (WHEREUPON, the jury is present).

9 **THE COURT:** The jury's indicated they have reached a
04:42:22PM 10 verdict. Would the foreperson please rise? The clerk will
11 read you the questions, just simply answer the questions as
12 she addresses them to you. Thank you.

13 **THE CLERK:** This is in the United States District
14 Court for the Western District of New York, in the case of
04:42:51PM 15 United States of America vs. Xavier Torres, also known as
16 Pistolita, No. 18-CR-6094, this is your verdict.

17 We, the jury, return the following verdicts in
18 United States vs. Xavier Torres, Docket No. 18-CR-6094.

19 Count 1, conspiracy to possess with intent to
04:43:17PM 20 distribute and/or to distribute cocaine and/or heroin,
21 beginning in or about 2015 through on or about January 29,
22 2018 in the Western District of New York, in violation of
23 Title 21, United States Code, Section 846.

24 We, the jury, render the following verdict with
04:43:34PM 25 respect to Count 1, not guilty or guilty.

1 **JURY FOREPERSON:** Guilty.

2 **THE CLERK:** We, the jury, find the allegation that
3 defendant Xavier Torres conspired to possess with intent to
4 distribute to distribute cocaine is proven or not proven.

04:44:04PM 5 **JURY FOREPERSON:** Proven.

6 **THE CLERK:** We, the jury, find that defendant
7 Xavier Torres conspired to possess with intent to distribute
8 to the following amount of cocaine:

9 5 kilograms or more, 500 grams or more, but less
04:44:26PM 10 than 5 kilograms, or less than 500 grams.

11 **JURY FOREPERSON:** 5 kilograms or more.

12 **THE CLERK:** We, the jury, find the allegation that
13 defendant Xavier Torres conspired to distribute cocaine is
14 proven or not proven.

04:44:42PM 15 **JURY FOREPERSON:** Proven.

16 **THE CLERK:** We, the jury, find that defendant
17 Xavier Torres conspired to distribute the following amount of
18 cocaine:

19 5 kilograms or more, 500 grams or more, but less
04:44:59PM 20 than 5 kilograms, or less than 500 grams.

21 **JURY FOREPERSON:** 5 kilograms or more.

22 **THE CLERK:** We, the jury, find that the allegation
23 that defendant Xavier Torres conspired to possess with intent
24 to distribute heroin is proven or not proven.

04:45:17PM 25 **JURY FOREPERSON:** Proven.

1 **THE CLERK:** We, the jury, find the defendant
2 Xavier Torres conspired to possess with intent to distribute
3 the following amount of heroin:

4 1 kilogram or more, 100 grams or more but less than
04:45:35PM 5 1 kilogram, or less than 100 grams.

6 **JURY FOREPERSON:** 1 kilogram or more.

7 **THE CLERK:** We, the jury, find that the allegation
8 that defendant Xavier Torres conspired to distribute heroin is
9 proven or not proven.

04:45:52PM 10 **JURY FOREPERSON:** Proven.

11 **THE CLERK:** We, the jury, find that defendant
12 Xavier Torres conspired to distribute the following amount of
13 heroin:

14 1 kilogram or more, 100 grams or more but less than
04:46:03PM 15 1 kilogram, or less than 100 grams.

16 **JURY FOREPERSON:** 1 kilogram or more.

17 **THE CLERK:** Count 2, knowing and unlawful use or
18 carry of firearms during and in relation to or possession of
19 firearms in furtherance of a drug trafficking crime beginning
04:46:32PM 20 in or about 2015 through on or about January 29, 2018 in the
21 Western District of New York, in violation of Title 18, United
22 States Code, Section 924(c)(1)(A)(i), 924(c)(1)(A)(ii),
23 924(c)(1)(A)(iii), and Section 2.

24 We, the jury, render the follow verdict with
04:46:59PM 25 respect to Count 2, not guilty or guilty.

1 **JURY FOREPERSON:** Guilty.

2 **THE CLERK:** We, the jury, find the allegation that
3 the firearm was brandished during and in relation to or in
4 furtherance of a drug trafficking crime is proven or not
04:47:19PM 5 proven.

6 **JURY FOREPERSON:** Proven.

7 **THE CLERK:** We, the jury, find the allegation that
8 the firearm was discharged during and in relation to or in
9 furtherance of a drug trafficking crime is proven or not
04:47:31PM 10 proven.

11 **JURY FOREPERSON:** Proven.

12 **THE CLERK:** And you certified that the above verdict
13 is true accurate and unanimous and dated it today?

14 **JURY FOREPERSON:** Yes, I did.

04:47:48PM 15 **THE CLERK:** Thank you.

16 **THE COURT:** You may be seated.

17 Members of the jury, you've indicated through your
18 verdict on the first count, conspiracy to possess with intent
19 to distribute and/or to distribute cocaine and/or heroin
04:48:09PM 20 beginning in or about 2015 through on or about January 29,
21 2018, in the Western District of New York, the jury rendered a
22 verdict of guilty.

23 In addition, we, the jury, find that the
24 allegations that defendant Xavier Torres conspired to possess
04:48:29PM 25 with intent to distribute cocaine, the jury answered that that

1 was proven.

2 We, the jury, find that the defendant Xavier Torres
3 conspired to possess with intent to distribute the following
4 amount of cocaine: 5 kilograms or more.

04:48:46PM 5 We, the jury, find that the allegation that
6 defendant Xavier Torres conspired to distribute cocaine is
7 proven.

8 We, the jury, find that the defendant Xavier Torres
9 conspired to distribute the following amount of cocaine: 5
04:49:03PM 10 kilograms or more.

11 We, the jury, find that the allegation that
12 defendant Xavier Torres conspired to possess with intent to
13 distribute heroin is proven.

14 We, the jury, find that defendant Xavier Torres
04:49:19PM 15 conspired to possess with intent to distribute the following
16 amount of heroin: 1 kilogram or more.

17 We, the jury, find that the allegation that
18 defendant Xavier Torres conspired to distribute heroin is
19 proven.

04:49:37PM 20 We, the jury, find that defendant Xavier Torres
21 conspired to distribute the following amount of heroin: 1
22 kilogram or more.

23 Count 2, knowing and unlawful use and carry of
24 firearms during and in relation to or possession of firearms
04:49:56PM 25 in furtherance of a drug trafficking crime beginning in or

1 about 2015 through on or about January 29, 2018, in the
2 Western District of New York, we, the jury, render the
3 following verdict with respect to Count 2: Guilty.

4 We, the jury, find the allegation that the firearm
04:50:19PM 5 was brandished during and in relation to or in furtherance of
6 a drug trafficking crime is proven.

7 We, the jury, find the allegation that the firearm
8 was discharged during and in relation to or in furtherance of
9 a drug trafficking crime is proven.

04:50:39PM 10 If this is in all respects your verdict, could you
11 please raise your right arm? All the jurors, all 12 jurors
12 have indicated that this was their verdict. It is unanimous.

13 Either party asking for a polling of the jury?

14 **MR. MARANGOLA:** No, Your Honor.

04:50:58PM 15 **MR. VERRILLO:** No, Your Honor.

16 **THE COURT:** No?

17 **MR. VERRILLO:** No.

18 **THE COURT:** Ladies and gentlemen, we have received
19 your verdict. Can we go to sidebar for a second?

04:51:11PM 20 (**WHEREUPON**, a discussion was held at side bar out
21 of the hearing of the jury.)

22 **THE COURT:** Can you hear me?

23 **MR. MARANGOLA:** Yes.

24 **THE COURT:** I want to be clear about the forfeiture
04:51:25PM 25 issue. It's not something that either party is asking to

1 submit to the jury; is that correct? First the Government?

2 **MR. MARANGOLA:** Yes, that's correct, Judge.

3 **THE COURT:** Mr. Verrillo?

4 **MR. VERRILLO:** Yes, Your Honor.

04:51:34PM 5 **THE COURT:** Okay. Then the Court can make that
6 determination. I just didn't want to discharge them with that
7 being any question. Thank you.

8 (**WHEREUPON**, side bar discussion concluded.)

9 **THE COURT:** Members of the jury, first of all, I
04:51:47PM 10 want to thank you for the patience, the cooperation you showed
11 during the course of this trial. It's a lengthy trial, I
12 think it was 17 days or somewhere along that, maybe not that
13 long, 13 or 14 days, seemed like 17.

14 In any event, you did pay careful attention to the
04:52:02PM 15 case, you gave it careful consideration, listened to the law.
16 These are not easy decisions. We get strangers together in
17 one day and by the end of a couple weeks they come to a
18 unanimous decision on something very important. As I told you
19 before, this case is important to the Government, very
04:52:20PM 20 important to the defendant as well.

21 And we thank you for giving your care and attention
22 to this case. You should know that the law of jealousy guards
23 the secrecy of your deliberations -- what you said, what the
24 other jurors said, what you decided may remain locked in that
04:52:34PM 25 secrecy.

1 Please go with the full knowledge you fulfilled
2 your responsibility as jurors.

3 I also want to thank the alternate jurors. I know
4 you did not get to deliberate; you had to wait in a room and
04:52:45PM 5 not discuss the case during that period of time. But it's
6 very critical that you were here. We couldn't conduct these
7 trials without individuals being willing to serve as jurors
8 and alternates, particularly in light of this situation with
9 the COVID infections. We've had jurors not be able to
04:53:02PM 10 continue in trials and we had to substitute alternates.

11 You've been here every day on time, all of you, so we thank
12 you for your patience and your understanding throughout this
13 trial.

14 At this time the jury will be discharged. You may
04:53:13PM 15 step down back to the jury room, all 16 can go now. I'm going
16 to come back and talk to you shortly. Thank you.

17 (WHEREUPON, the jury was discharged at 4:54 p.m.)

18 **THE COURT:** We'll put the matter on for sentencing
19 for January 14th at 3:30. Obviously if we need more time, we
04:54:55PM 20 can always adjust that.

21 As far as the forfeiture of one Ruger firearm, Mr.
22 Verrillo, do you expect to contest that in any way?

23 **MR. VERRILLO:** Just one second, Your Honor. There's
24 no claim against that firearm. My client's not making any
04:55:19PM 25 claim against that.

1 **THE COURT:** Then I believe the Government can just
2 submit an order on that.

3 **MR. MARANGOLA:** Yes, Judge.

4 **THE COURT:** Okay, thank you. The defendant will be
04:55:27PM 5 remanded pending sentencing. Thank you.

6 **MR. VERRILLO:** Thank you.

7 **MR. MARANGOLA:** Thank you.

8 (WHEREUPON, proceedings adjourned at 4:56 p.m.)

9 * * *

10 **CERTIFICATE OF REPORTER**

11

12 In accordance with 28, U.S.C., 753(b), I certify that
13 these original notes are a true and correct record of
14 proceedings in the United States District Court for the
15 Western District of New York before the Honorable Frank P.
16 Geraci, Jr. on November 4th, 2021.

17

18 S/ Christi A. Macri

19 Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)
20 Official Court Reporter

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